

April 19, 2019

The Honorable Suzanne Bonamici
Chair, Subcommittee on Civil Rights and Human Services
Committee on Education and Labor
U.S. House of Representatives

The Honorable James Comer
Ranking Member, Subcommittee on Civil Rights and Human Services
Committee on Education and Labor
U.S. House of Representatives

CC: The Honorable Bobby Scott
Chair, Committee on Education and Labor
U.S. House of Representatives

Dear Chair Bonamici, Ranking Member Comer, and Members:

Thank you for the opportunity to submit written testimony for the legislative record of H.R. 5, the Equality Act.

We are writing in our capacity as scholars of the Williams Institute at UCLA School of Law. Founded in 2001, the Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. Experts at the Williams Institute have published hundreds of public policy studies and law review articles that have greatly expanded our knowledge about the lesbian, gay, bisexual and transgender (LGBT) population in the United States; filed amicus briefs in many court cases involving LGBT rights, which have been cited by the U.S. Supreme Court and other courts; provided expert testimony at legislative hearings and had our research findings cited in legislation and legislative analyses; been widely cited in the national media; and provided educational programs for thousands of judges, legislators, lawyers, and members of the public. The Williams Institute is uniquely positioned as an interdisciplinary research institute of legal and social science scholars who conduct high-quality research in order to improve policymaking and other government functions.

Based on this expertise, in 2009 we submitted a comprehensive report to Congress on employment discrimination against LGBT people as part of the legislative record of H.R. 3017, the Employment Non-Discrimination Act of 2009. This report of over 1,500 pages analyzed the Supreme Court's treatment of the sovereign immunity doctrine and provided a comprehensive review of relevant case law, administrative complaints, surveys, laws and policies, and other research that justices of the Supreme Court have considered when applying that doctrine. The report was the result of research provided by ten different law firms and the contributions of scholars from a number of academic disciplines, including history, political science, economics, sociology, and demography. The research resulted in a set of fifty reports, one for each of the fifty states, plus a number of additional studies

and literature reviews presented as a series of chapters summarizing our overall research findings. Based on our analysis, we concluded that:

- There is a widespread and persistent pattern of unconstitutional discrimination on the basis of sexual orientation and gender identity against state government employees;
- There is no meaningful difference in the pattern and scope of employment discrimination against LGBT people by state governments compared to the private sector and other public sector employers;
- The list of over 380 documented specific examples that we compiled far under-represents the actual prevalence of employment discrimination against LGBT people by state and local governments; and
- Thus, Congress has the authority under the Fourteenth Amendment to abrogate state sovereign immunity and apply federal civil rights protections against sexual orientation and gender identity discrimination in state employment.

First, we are writing to submit our 2009 report, Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment, to the record of H.R. 5, the Equality Act of 2019. An executive summary, the main papers, and the fifty state reports are located here: <https://williamsinstitute.law.ucla.edu/research/discrimination/documenting-discrimination-on-the-basis-of-sexual-orientation-and-gender-identity-in-state-employment/>. We believe that the findings of that report continue to be an accurate assessment of the widespread and persistent pattern of unconstitutional discrimination that exists in state level employment today.

Second, we are writing to both update our 2009 report and address the Equality Act's abrogation of sovereign immunity, recognizing that the Act prohibits discrimination not only in employment, but a number of other areas as well. Based on our research since 2009, as well as a review of relevant case law and the research of other scholars, we conclude:

1. Millions of Americans will gain protections under the Equality Act.¹
 - There are an estimated 13 million LGBT people age 13 and older in the U.S. Approximately 6.9 million live in states that do not statutorily prohibit sexual orientation and gender identity discrimination in public accommodations.
 - There are an estimated 11 million LGBT adults in the U.S. Over 5.6 million live in states without statutory protections against sexual orientation and gender identity discrimination in housing and 8 million lack such protections in credit.

¹WILLIAMS INST., LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NON-DISCRIMINATION STATUTES (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-April-2019.pdf>.

- An estimated 8.1 million LGBT workers age 16 and older live in the U.S. About half of these workers—4.1 million people—live in states without statutory protections against sexual orientation and gender identity discrimination in employment.
 - There are over 3.5 million LGBT students age 15 and older in the U.S. About 2.1 million live in states without statutory protections against sexual orientation and gender identity discrimination in education.
2. There is a widespread and persistent pattern of unconstitutional discrimination based on sexual orientation and gender identity by states in areas covered by the Equality Act. As explained more fully below, a variety of evidence documents this pattern of discrimination, including case law, administrative complaints, surveys, and other research.
 3. The reported court cases, administrative complaints, and other documented examples of discrimination against LGBT people by state and local governments far underrepresent the actual prevalence of discrimination against them.
 - In terms of reported court cases, legal scholars² have noted that courts have often been unreceptive to LGBT plaintiffs and reluctant to write published opinions about them, reducing the number of court opinions that we would expect to find.³
 - Some LGBT people may even fear harassment from a judge and thus may not bring a case. For example, in December of 2018 a state judge in New York had to resign after making a homophobic remark⁴ and in August of 2018 a lawsuit was filed against a judge in Ohio who refused to allow transgender teenagers to legally change their names.⁵
 - In terms of administrative complaints, academic studies have shown that state and local administrative agencies often lack the resources, knowledge, and willingness to consider sexual orientation and gender identity discrimination complaints.⁶

² See, for example, Rhonda R. Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 50 HASTINGS L.J. 1015, 1022 n.27 (1999), citing *State v. Brown*, 39 Ohio St. 2d 112, 118, 313 N.E.2d 847, 851 (1974) (Justice Stern noted in his dissent: 'In fact, nowhere in the recorded decisions of the Ohio Supreme Court has any justice ever used the term 'homosexual' or 'homosexuality'... 'His opinion indicates that Justice Stern did computerized research using LEXIS.'). See also *To Publish or Not to Publish - That Is The Question*, 2 SEX L. RPTR. 18 (1976); KENNETH DAVISON, RUTH BADER GINSBURG & HERMA HILL KAY, *SEX-BASED DISCRIMINATION* (West Pub. Co. 1974), discussing unreported lesbian mother cases and applying the California standards with respect to certification for non-publication to determine whether many of the child custody cases were properly denied publication.) Howard Slavitt discusses the impact on legal precedent of the failure to publish certain cases by using as an example a case involving an LGBT state employee, in this case an inmate employed in the prison's education department. The plaintiff won his employment discrimination claim on constitutional grounds, but the Fourth Circuit chose not to publish the opinion, greatly reducing its value as precedent to support future claims. Howard Slavitt, *Selling The Integrity of the System of Precedent: Selective Publication, Depublication and Vacatur*, 30 HARV. C.R.-C.L. L. REV. 109, 110 (1995).

³ See Equality Act, Hearing on H.R. 5 Before the Comm. on Educ. and Labor, 116th Cong. (2019) (written testimony of Todd Brower, Judicial Educ. Dir., Williams Inst.).

⁴ Rhuaridh Marr, *New York Judge Resigns after Homophobic Remarks about Viggo Mortensen*, METRO WEEKLY (Dec. 14, 2018), <https://www.metroweekly.com/2018/12/new-york-judge-resigns-after-homophobic-remarks-about-viggo-mortensen/>.

⁵ AP, *Judge Sued over Refusal to OK Transgender Teens Names*, NBC NEWS (Aug. 6, 2018), <https://www.nbcnews.com/feature/nbc-out/judge-sued-over-refusal-ok-transgender-teens-new-names-n897911>.

⁶ E.g., Christy Mallory & Brad Sears, *Discrimination against State and Local Government LGBT Employees: An Analysis of Administrative Complaints*, 4 HARVARD KENNEDY LGBTQ POLICY J. 37 (2014); Roddrick A. Colvin, *Improving State Policies Prohibiting Public Employment Discrimination Based on Sexual Orientation*, 20 REV. PUB. PERSONNEL ADMIN. 5 (2000); Norma M. Riccucci & Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AM. REV. PUB. ADMIN. 175 (1996).

- Many cases settle before an administrative complaint or court case is filed. Unless the parties want the settlement to be public and the settlement is for a large amount, it is likely to go unreported in the media or academic journals. Also, an increasing number of complaints are resolved through arbitration.⁷
 - LGBT people are often reluctant to pursue claims for fear of retaliation or outing themselves and experiencing further discrimination.⁸
 - State statutes and executive orders do not adequately address discrimination against LGBT people,⁹ which also limits the number of people who come forward.
 - Finally, and perhaps most importantly, numerous studies have documented that as many as one-third of LGBT people are not out in the public sphere, including in the workplace.¹⁰ They try to avoid discrimination by hiding who they are.
4. There is no meaningful difference in the pattern and scope of discrimination against LGBT people by state governments in areas covered by the Equality Act as compared to discrimination in the private sector and by the federal government and local governments. In fact, state governments are substantially involved in some of the areas with the most reported discrimination cases, including in corrections, policing, fire departments, the criminal justice system, higher education, and K-12 education.¹¹ For example, due to negative but false stereotypes about LGBT people and children, LGBT educators have been subjected to a great deal of discrimination. The cases involving police, fire departments, and corrections often have fact patterns that include quite brutal verbal and physical violence.

Regardless of the level of judicial scrutiny applied, sexual orientation and gender identity discrimination are unconstitutional, both under the Equal Protection Clause and under other constitutional provisions.

- **RATIONAL BASIS:** The Supreme Court has consistently held that discrimination based on sexual orientation by states does not have a rational basis when considering the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment.¹² A

⁷ Roddrick A. Colvin & Norma M. Riccucci, *Employment Nondiscrimination Policies: Assessing Implementation and Measuring Effectiveness*, 25 INT'L J. PUB. ADMIN. 95 (2002).

⁸ E.g., NAT'L EDUC. ASSOC., REPORT OF THE NEA TASK FORCE ON SEXUAL ORIENTATION (2009); SAN FRANCISCO BAY GUARDIAN & TRANSGENDER LAW CTR., GOOD JOBS NOW! A SNAPSHOT OF THE ECONOMIC HEALTH OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES (2006); TASK FORCE ON DIVERSITY IN THE PROFESSION, MINN. STATE BAR ASSOC., 2005 SELF-AUDIT FOR GENDER AND MINORITY EQUITY: A RESEARCH STUDY OF MINNESOTA LAW FIRMS, NON-FIRM EMPLOYERS AND INDIVIDUAL LAWYERS (2006).

⁹ See, e.g., WILLIAMS INST., LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NON-DISCRIMINATION STATUTES (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-April-2019.pdf>.

¹⁰ Jennifer C. Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 LOY. L.A. L. REV. 715, 735-36 (2012).

¹¹ BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, DOCUMENTING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT: RELATIONSHIP OF SEXUAL ORIENTATION AND GENDER IDENTITY TO PERFORMANCE IN THE WORKPLACE (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/12_SpecificExamples.pdf.

¹² *Romer v. Evans*, 517 U.S. 620 (1996); see also *Lawrence v. Texas*, 539 U.S. 558 (2003); *U.S. v. Windsor*, 570 U.S. 744 (2013); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

number of federal courts have reached the same conclusion, including as to transgender people.¹³

- **SUSPECT/QUASI-SUSPECT CLASS:** LGBT people meet the all of the criteria for classification on the basis of sexual orientation or gender identity to receive heightened scrutiny under Equal Protection Clause analysis, including because:
 - i. Discrimination on the basis of sexual orientation or gender identity in the areas covered by the Equality Act is always irrational. An individual's sexual orientation or gender identity is not relevant to how that person performs at work or in school or their ability to parent, for example. Accordingly, courts have concluded that sexual orientation and gender identity are not related to an individual's ability to contribute to society or perform in the workplace.¹⁴
 - ii. As recognized repeatedly by the Supreme Court and many other courts, LGBT people have faced a history of discrimination by federal, state, and local governments, and in the private sector. Many historians have chronicled the long history of discrimination against LGBT people by state governments, including sodomy laws, purges from public employment, raids and abuse from police, abuse in incarcerated settings, laws that prohibited same-sex marriage, laws that barred and impeded LGBT people from parenting, morality requirements in state occupational licenses, and more.¹⁵ In fact, the US Department of Justice documented this history in its brief to the Supreme Court in *United States v. Windsor*.¹⁶ These laws and practices are not just part of our history; they continue today.
 - iii. A number of federal courts and state courts have held that discrimination on the basis of sexual orientation¹⁷ and gender identity¹⁸ is entitled to heightened scrutiny.
- **SEX DISCRIMINATION:** Discrimination on the basis of sexual orientation or gender identity is sex discrimination and is based on gender stereotypes, and is therefore entitled to heightened scrutiny under the Equal Protection Clause. The EEOC and a growing number of federal courts have reached this conclusion when considering equal protection claims, as well as claims under federal civil right statutes—which the Supreme

¹³ *E.g.*, *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho 2018) (“there is no rational basis for denying transgender individuals birth certificates that reflect their gender identity”).

¹⁴ BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, DOCUMENTING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT: RELATIONSHIP OF SEXUAL ORIENTATION AND GENDER IDENTITY TO PERFORMANCE IN THE WORKPLACE (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/4_PerformanceInWorkplace.pdf.

¹⁵ See BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, DOCUMENTING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT: LEGACY OF STATE LAWS, POLICIES, AND PRACTICES, 1945-PRESENT (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/5_History.pdf.

¹⁶ Brief for the United States, *U.S. v. Windsor*, 570 U.S. 744 (2013).

¹⁷ *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 483 (9th Cir. 2014); *Windsor v. United States*, 699 F.3d 169, 185 (2d Cir. 2012), *aff'd on other grounds*, 570 U.S. 744 (2013).

¹⁸ See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 749 (E.D. Va. 2018); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, 208 F. Supp. 3d 850, 873 (S.D. Ohio 2016); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015).

Court finds relevant to courts' consideration of sex discrimination under the Equal Protection Clause.¹⁹

- **OTHER CONSTITUTIONAL CLAIMS:** Discrimination against LGBT people by state governments also frequently violates a number of other constitutional rights, including First Amendment rights to free expression and association, the right to privacy and intimate association, liberty interests protected by the Due Process Clause, and, in incarcerated settings, the Eighth Amendment right to be free from cruel and unusual punishment.²⁰

Based on the foregoing, we believe that there is a sufficient record of unconstitutional violations by state governments for Congress to abrogate state sovereign immunity in the Equality Act. We base this conclusion on our own research and the following developments since we submitted our testimony in 2009 to Congress.

I. Significantly More Research Documents Discrimination Against LGBT People

We have much more research available today than we did in 2009 that documents discrimination against LGBT people in areas covered by the Equality Act.

Williams Institute scholars have published over 170 studies since 2009 that are relevant to documenting discrimination in areas covered by the Act. These include studies on the demographics of the LGBT population in the United States, including by state; the health and economic disparities LGBT people face; and the discrimination, violence, and bullying LGBT people face in areas covered by the Equality Act. Many of these studies have updated and/or expanded the state reports we submitted to Congress in 2009 to include other areas now covered by the Equality Act, including 78 studies covering 37 states. Deliberately, we have focused this research to include discrimination in both public and private sectors, and on the more than half of states that do not have state laws explicitly prohibiting sexual orientation and gender identity discrimination. Appendix 1 includes all of our relevant state specific research. Appendix 2 includes more general relevant research by the Williams Institute. **We request that these studies, as well as this statement, be entered into the record.**

In addition to this submission, a number of Williams Institute scholars have submitted testimony for the legislative record of the Equality Act of 2019, summarizing relevant research in their areas of expertise, including employment (Professor Lee Badgett), education (Kerith Conron), state judicial systems (Professor Todd Brower), health care (Jocelyn Samuels), foster care systems (Bianca

¹⁹ See, e.g., *Glenn v. Brumby*, 663 F.3d 1312, 1320–21 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 573–75 (6th Cir. 2004) (The Sixth Circuit has of course followed this precedent in more recent Title VII cases. See *EEOC v. R.G. & G.R. Harris Funeral Homes*, 884 F.3d 560, 575 (6th Cir. 2018) (“[D]iscrimination ‘because of sex’ inherently included discrimination against employees because of a change in their sex.”); *Barnes v. City of Cincinnati*, 401 F.3d 729, 736 (6th Cir. 2005)); *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995, at *4 (Apr. 20, 2012) (holding that “claims of discrimination based on transgender status, also referred to as claims of discrimination based on gender identity, are cognizable under Title VII’s sex discrimination prohibition”); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016); *Whitaker ex rel. Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017); *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 741–42 (E.D. Va. 2018) (Title IX); *M.A.B. v. Bd. of Educ. of Talbot County*, 286 F. Supp. 3d 704 (D. Md. 2018) (Title IX).

²⁰ There are a range of federal constitutional provisions that require facilities to ensure that LGBT individuals in custody are physically safe, free from cruel and unusual punishment (or for juveniles and pre-trial detainees, free from unreasonable conditions of confinement), have equal access to programs and facilities, and have access to necessary medical care. See JODY MARKSAMER & HARPER JEAN TOBIN, NAT’L CTR. FOR TRANSGENDER EQUALITY, *STANDING WITH LGBT PRISONERS: AN ADVOCATE’S GUIDE TO ENDING ABUSE AND COMBATING IMPRISONMENT* (2013), http://www.transequality.org/sites/default/files/docs/resources/JailPrisons_Resource_FINAL.pdf.

Wilson), and adverse experiences of LGBT people in employment, education, and housing (Ilan Meyer).

There has also been a dramatic increase in research conducted outside of the Williams Institute documenting discrimination against LGBT people. For decades, bias against LGBT people resulted in a lack of research that met the most rigorous academic standards. Such bias meant that national, state, local, and private surveys did not include questions about sexual orientation and gender identity. It also meant that many academics and other researchers feared that doing research related to LGBT populations or issues would mean risking their own jobs or career advancement. This has changed dramatically over the last decade. There has been a huge increase in the number of surveys, including federal and state surveys, that ask about sexual orientation, and a growing number of surveys include questions that ask about gender identity and expression.²¹ For example, the Gallup Daily Tracking poll now provides ongoing, current data about LGBT people, and the Census Bureau's American Community Survey provides annual data about same-sex couples.

Moreover, today, hundreds, if not thousands, of academic scholars publish on topics related to LGBT discrimination, (Appendix 3 includes examples of social sciences articles addressing discrimination against LGBT people and Appendix 4 includes examples of law review articles addressing discrimination against LGBT people) as well as researchers at non-profit research centers such as the Center for American Progress,²² Gallup,²³ the Movement Advancement Project,²⁴ Pew Research Center,²⁵ Public Religion Research Institute,²⁶ Rand,²⁷ and the Urban Institute.²⁸ In short, there now is a wealth of research from multiple scholars and sources documenting that discrimination against LGBT people is persistent and widespread in the public and private sectors.

II. Many Courts Have Held That Discrimination Against LGBT People Is Unconstitutional

In the past decade, a number of courts have held that discrimination by state and local governments against LGBT people is unconstitutional. Notably, the Supreme Court in *Obergefell v. Hodges*,²⁹ and dozens of other state and federal courts, struck down marriage laws that excluded same-sex couples as unconstitutional.³⁰ With the growing understanding that

²¹ See, e.g., FED. INTERAGENCY WORKING GROUP ON IMPROVING MEASUREMENT OF SEXUAL ORIENTATION AND GENDER IDENTITY IN FED. SURVEYS, CURRENT MEASURES OF SEXUAL ORIENTATION AND GENDER IDENTITY (2016), <https://nces.ed.gov/FCSM/pdf/buda5.pdf>; Methods and Measurement in Sexual & Gender Minority Health Research: Examples of Sexual Orientation and Gender Identity (SOGI) Questions, Sexual and Gender Minority Research Office, Nat'l Institutes of Health, <https://dpcpsi.nih.gov/sgmro/measurement/questions> (last visited Apr. 10, 2019).

²² LGBT, Center for Am. Progress, <https://www.americanprogress.org/issues/lgbt/view/> (last visited Apr. 10, 2019).

²³ LGBT, Gallup, <https://news.gallup.com/topic/lgbt.aspx> (last visited Apr. 10, 2019).

²⁴ Movement Advancement Project, <http://lgbtmap.org/> (last visited Apr. 10, 2019).

²⁵ Anna Brown, *5 Key Findings about LGBT Americans*, PEW RESEARCH CENTER (June 13, 2017), <https://www.pewresearch.org/fact-tank/2017/06/13/5-key-findings-about-lgbt-americans/>.

²⁶ LGBT, PRRI, <https://www.prri.org/topic/lgbt/> (last visited Apr. 10, 2019).

²⁷ Gay, Lesbian, Bisexual, and Transgender Populations, RAND, <https://www.rand.org/topics/gay-lesbian-bisexual-and-transgender-populations.html> (last visited Apr. 10, 2019).

²⁸ Gender and Sexuality, URBAN INST., <https://www.urban.org/research-area/lgbt-equity> (last visited Apr. 10, 2019).

²⁹ *Obergefell*, 135 S. Ct. 2584 (2015).

³⁰ See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) for a list of state and federal judicial decisions addressing same-sex marriage, including the following federal appellate and state supreme court decisions striking down the denial of marriage rights to same-sex couples: *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014); *Goodridge v. Department of Public Health*, 798 N. E. 2d 941 (Mass. 2003); *Kerrigan v. Commissioner of Public Health*, 957 A. 2d 407 (Conn. 2008); *Varnum v. Brien*, 763 N. W. 2d 862 (Iowa 2009); *Griego v. Oliver*, 316 P. 3d 865 (N.M. 2013); and *Garden State Equality v. Dow*, 79 A. 3d 1036 (N.J. 2013).

discrimination against LGBT people is entitled to heightened scrutiny and/or is not rational, courts have also supported constitutional claims against state and local governments for discrimination in a number of areas. Appendix 5 provides a sample of these cases from 2009 to the present. Examples include:

- In 2018, same-sex couples in Michigan who wished to adopt children challenged the state's practice of allowing taxpayer-funded child placement agencies to deny placement of children based on religious beliefs. The court, applying rational basis review, denied the defendants' motion to dismiss the plaintiffs' equal protection claim, finding that plaintiffs had stated a plausible claim that the defendants had acted with animus and could not justify their actions.³¹
- In 2017, two transgender women from Idaho brought suit against the state alleging that it violated the Equal Protection and Due Process Clauses by barring changes to the sex listed on a birth certificate absent a showing of error made at the time of birth.³² The defendants admitted that the policy violated the Equal Protection Clause, even under rational basis review, and said that they would change the policy once they had a court order to that effect. The court held that discrimination against transgender people warrants heightened scrutiny because they are a quasi-suspect class, but that the state's birth certificate policy would be unconstitutional even under rational basis review.
- In 2017, three transgender people and an LGBT civil rights organization brought suit against the Commonwealth of Puerto Rico challenging its policy of allowing transgender people to change their gender on their birth certificates, but in such a way that it still revealed their transgender identity. The court held that the policy violated the plaintiff's constitutional right to privacy protected by the Fourteenth Amendment's Due Process Clause. The court reasoned "such forced disclosure of a transgender person's most private information is not justified by any legitimate government interest... To the contrary, it exposes [them] to a substantial risk of stigma, discrimination, intimidation, violence, and danger. Forcing disclosure of transgender identity chills speech and restrains engagement in the democratic process in order for transgender [people] to protect themselves from the real possibility of harm and humiliation. The Commonwealth's policies not only harm the plaintiffs before the Court; it also hurts society as a whole by depriving all of the voices of the transgender community."³³
- In 2017, transgender women who were employed by the state of Wisconsin brought suit against the state for denying them coverage for gender dysphoria treatment through their health insurance policy.³⁴ The court determined that the treatment exclusion constituted unlawful sex discrimination under Title VII and the ACA, and violated the Equal Protection Clause. In its Equal Protection Clause analysis, the court applied heightened scrutiny to the employer's denial of coverage because "heightened scrutiny may be

³¹ *Dumont v. Lyon*, 341 F. Supp. 3d 706 (E.D. Mich. 2018), motion to certify appeal denied, No. 17-CV-13080, 2018 WL 5292022 (E.D. Mich. Oct. 25, 2018).

³² *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho).

³³ *Gonzalez v. Nevares*, 305 F. Supp. 3d 327 (D. P.R. 2018). See also, *K.L. v. Alaska*, No. 3AN-11-05431 CI (Alaska Sup. Ct. March 12, 2012); *Love v. Johnson*, No. 15-11834, (E.D. Mich. Nov. 16, 2015).

³⁴ *Boyden v. Conlin*, 341 F. Supp. 3d 979 (W.D. Wis. 2018).

appropriate either on the basis of sex discrimination or through the recognition of transgender as a suspect or quasi-suspect class.”

- In 2016, a transgender woman incarcerated in Missouri brought suit against the state for denying her medically necessary care for her gender dysphoria, including hormone therapy, permanent hair removal, and access to gender-affirming canteen items. The court entered a preliminary injunction in favor of the plaintiff, finding that the state’s denial of care likely violated the Eighth Amendment.³⁵
- In 2015, a high school senior in Tennessee brought suit against her public high school after it disciplined her for wearing a t-shirt that read, “Some People Are Gay, Get Over It.” On the day plaintiff wore the shirt, the principal called her to the front of the cafeteria in front of other students and told her that she could not wear that shirt or “any other shirt referencing LGBT rights.” Granting the student’s motion for summary judgment, the court found that “student expression on LGBT issues is speech on a purely political topic, which falls clearly within the ambit of the First Amendment’s protection.”³⁶
- In 2015, a transgender public high school student brought suit against his school in Virginia for denying him access to restrooms consistent with his gender identity.³⁷ The court denied the defendant’s motion to dismiss the student’s equal protection claim. In its analysis, the court found that that heightened scrutiny applies because “transgender individuals constitute at least a quasi-suspect class” and because classification based on transgender status amounts to classification based on sex.
- In 2013, a high school student in Florida brought suit against her public high school after it disciplined her for participating in the National Day of Silence, a peaceful protest to bring awareness to bullying of LGBT youth. The court denied the defendants’ motion to dismiss, finding that “the events... support the plaintiff’s First Amendment claims.”³⁸
- In 2012, same-sex couples filed suit arguing that a Michigan state law prohibiting public employers from providing benefits to same-sex partners violated their equal protection and due process rights. The court found that gays and lesbians satisfy the heightened scrutiny factors, but went on to apply rational basis review because it was bound by Sixth Circuit precedent holding that sexual orientation discrimination is not entitled to heightened scrutiny. In granting a preliminary injunction, the court found that that the

³⁵Hicklin v. Precynthe, No. 4:16-CV-01357-NCC (E.D. Mo. May 22, 2018). See also Cole v. Coe, No. 3:14-cv-01314-SMY– RJD, 2016 WL 6804486, at *3 (S.D. Ill. Nov. 17, 2016) (“Gender dysphoria is undoubtedly a serious medical condition.”); Kothmann v. Rosario, 558 Fed. Appx. 907, 909–11 (11th Cir. 2014) (rejecting a qualified immunity argument and finding that it is clearly established that a prison official may not refuse to provide a transgender inmate’s required medical treatments, which naturally includes prescribed hormone treatments); Norsworthy v. Beard, 87 F. Supp. 3d 1164, 1188 (N.D. Cal. 2015) (granting a prisoner with gender dysphoria a preliminary injunction for sexual reassignment surgery, relying on the WPATH’s standards of care to reject an outlier medical opinion proffered by the defendants); DeLonta v. Johnson, 708 F.3d 520 (4th Cir. 2013) (categorical refusal to even evaluate patient with persistent gender dysphoria symptoms for surgical treatment stated plausible Eighth Amendment claim); Fields v. Smith, 653 F.3d 550 (7th Cir. 2011) (holding that Wisconsin’s blanket rule against state funds being used to treat prisoners diagnosed with gender identity disorder constituted cruel and unusual punishment); Konitzer v. Frank, 711 F. Supp. 2d 874 (E.D. Wis. 2010); Fields v. Smith, 653 F.3d 550, 557 (7th Cir. 2011) (rejecting contention that hormone therapy would increase risk of assaults, which defendants’ own expert called “an incredible stretch”).

³⁶ Young v. Giles Cty. Bd. of Educ., 181 F. Supp. 3d 459 (M.D. Tenn. 2015).

³⁷ Grimm v. Gloucester Cty. Sch. Bd., 302 F. Supp. 3d 730 (E.D. Va. 2018).

³⁸ Hatcher v. Desoto County Sch. Dist. Bd. Of Educ., 939 F. Supp. 2d 1232 (M.D. Fla. 2013), aff’d Hatcher ex rel. Hatcher v. Fusco, 570 F. App’x 874 (11th Cir. 2014).

same-sex couples had stated a plausible claim that the law violated the Equal Protection Clause when the rational basis for the benefits limitations was fairly analyzed, and they had shown a likelihood of succeeding on that claim.³⁹

- In 2011, the Eleventh Circuit affirmed a district court's grant of summary judgment in favor of an employee who worked as an editor in the state of Georgia's General Assembly Office of Legislative Counsel. When the plaintiff told her supervisor that she was ready to proceed with her transition, she was told that it was "inappropriate, that it would be disruptive, that some people would view it as a moral issue, and that it would make [her] coworkers uncomfortable"—and was summarily fired. Applying heightened scrutiny, the Eleventh Circuit affirmed her sex discrimination claim under the Equal Protection Clause.⁴⁰
- In 2011, a teacher brought suit against his former employer, a public school district in North Carolina, alleging that his contract was not renewed because of his sexual orientation.⁴¹ According to the teacher, the school's principal told him that he "didn't belong here," and reported that parents had complained about him teaching their children because he was gay. The teacher also stated that after news of his non-renewal spread, other teachers began to make homophobic comments and jokes about him and that the principal was "outraged" when she found out that his partner visited him at the school. A district court allowed the teacher's claim based on the Equal Protection Clause to proceed.
- In 2011, the mother of a deceased 13 year-old boy filled a complaint against a school district in California for failure to protect her son from anti-LGBT harassment and bullying. After the student came out, other students began routinely calling him derogatory names and told him to "kill himself" and "burn in hell." Students bumped him while he walked; threw food, bottles, pencils, and erasers at him; and on one occasion attempted to shove a pencil up his pants. Instead of intervening, a number of teachers also made disparaging comments in front of him and his classmates, including betting on when he would "come out," asking what was "wrong" with him, and saying he was "fruity," "ugly" and "in need of help." After being assaulted by a group of classmates one day, he hung himself in his backyard. The court denied school administrators' motion to dismiss an equal protection claim against them for failing to protect the student from harassment.⁴²
- In 2010, a gay man incarcerated in a state facility in Michigan brought suit against the prison alleging that he had been removed from his public-works employment because of his sexual orientation, which violated his equal protection and Eighth Amendment rights. The man said that public-works officers ridiculed and belittled him, refused to strip search him because he was gay, and expressed discomfort when they were around him. He also said that he was removed from his public-works position allegedly because of his

³⁹ *Bassett v. Snyder*, 951 F. Supp. 2d 939 (E.D. Mich. 2013).

⁴⁰ *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

⁴¹ *Dawkins v. Richmond Cty Schools*, No. 1:12CV414, 2012 WL 1580455 (M.D.N.C. May 4, 2012), *adopted by Dawkins v. Richmond Cty Schools*, No. 1:12-CV-2014 (M.D.N.C. Feb. 19, 2014).

⁴² *Walsh v. Tehachapi Unified Sch. Dist.*, 827 F. Supp. 2d 1107 (E.D. Cal. 2011).

diabetic condition, though other heterosexual, insulin-dependent men were allowed to stay in the program. The district court dismissed the claim. The Sixth Circuit reversed, finding that the man had stated a plausible claim that he was removed from his position due to anti-gay animus in violation of the Equal Protection Clause.⁴³

- In 2009, a public high school student in Mississippi was told she could not attend prom with her girlfriend or wear a tuxedo. In considering a preliminary injunction, the court determined that the school violated the student's First Amendment right to expression by both not allowing her to wear a tuxedo and by denying her request to bring her girlfriend to the prom.⁴⁴
- In 2009, employees of the state of Arizona brought suit against the state alleging that a state law denying employment benefits to same-sex domestic partners of state employees on same terms they were available to different-sex spouses violated the Equal Protection Clause and the Due Process Clause.⁴⁵ The court stated that it need not determine if heightened scrutiny is proper because the statute failed even under rational basis review.
- In 2009, a former employee of the state of Kentucky filed suit alleging that he was fired because of his sexual orientation.⁴⁶ The state agency terminated him after it found emails exchanged between him and a co-worker. The court found that the agency's enforcement of its internet usage policy "focused disproportionately on homosexual employees, and more particularly, friendly homosexual bantering within emails" and that the agency discriminated against him because of his sexual orientation in violation of the Equal Protection Clause.
- In 2009, a former public school student in New York filed a complaint alleging that school administrators discriminated against him based on his sex and sexual orientation and were deliberately indifferent to harassment of him by staff and students. The court held that his First Amendment claims survived a motion to dismiss because the school did not recognize plaintiff's Gay Straight Alliance to the same extent it recognized other student groups. Plaintiff's equal protection claims also survived, with the court determining that rational basis review applied.⁴⁷

III. Discrimination Against LGBT People by State and Local Governments Has Been Documented in Additional Ways

In addition to court cases with specific holdings supporting constitutional claims, we also have documented a number of other specific examples of discrimination by state and local governments against LGBT people. Appendix 6 provides additional examples of discrimination against LGBT workers in the public sector from 2009 to the present, as well as survey data and documentation of discrimination against LGBT students in public schools from grades K-12, as well as in higher

⁴³ *Davis v. Prison Health Services*, 679 F.3s 433 (6th Cir. 2019).

⁴⁴ *McMillen v. Itawamba County Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010)

⁴⁵ *Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011).

⁴⁶ *Stroder v. Ky. Cabinet for Health & Family Svcs*, No. 3:09-CV-00947-H, 2012 WL 1424496 (W.D. Ky., Apr. 24, 2010).

⁴⁷ *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135 (N.D.N.Y 2011).

education. Of note, given federal and state surveys, as well as the large number of campus climate surveys done at public middle schools, high schools, colleges, and universities, there is a large amount of data documenting discrimination, bullying, and harassment of LGBT students, faculty, and staff that is state specific.

Here are some examples of discrimination included in Appendix 6:

- In 2016, a transgender professor filed a lawsuit against Saginaw Valley State University in Michigan alleging that that school had discriminated against her because of her gender identity. According to the professor, when she came out to her supervisor, the supervisor responded, “You disgust me! I can’t even stand to look at you! This is not about your so-called ‘gender identity.’ This is about you being a liar.” The professor said her administrative position was abruptly eliminated after she came out.⁴⁸
- In 2016, a married couple filed a complaint with the Montana Human Rights Bureau alleging that state employees took away their foster son because they are a same-sex couple. The men had been fostering the baby since shortly after his birth and wanted to adopt him. According to the complaint, one social worker indicated that they were a suitable long-term placement, but another said that they would “always be on the bottom of her list for placement and that other social workers wouldn’t want to work with [them] because [they are] a gay couple.” After three months, the state agency unexpectedly removed the baby from the couple’s home because a cousin of the baby was willing to adopt him. Although the Montana Human Rights Act does not prohibit discrimination based on sexual orientation, the men filed a complaint based on sex and marital status. The complaint is pending.⁴⁹
- A lesbian teacher settled her 2016 complaint against a public high school in Pickens County, South Carolina alleging that she was unlawfully fired for allowing a transgender student to use a teachers’ restroom rather than the designated one that was nearly a quarter mile away from the student’s classes.⁵⁰ Within two weeks of her supporting the transgender student, nearly every assistant principal at the high school visited her class to observe her,⁵¹ allegedly as part of a semester long mentoring program that included time for interactive feedback and improvement. However, she was terminated in less than a month.⁵² As a result, she lost her state teacher accreditation and was put on “a list” barring her from teaching anywhere in the tristate area.⁵³ In October 2017, the parties settled the case.⁵⁴

⁴⁸ Kate Wells, *Transgender Professor Sues Saginaw Valley State University for Alleged Discrimination*, MICHIGAN RADIO (Apr. 8, 2016), <https://www.michiganradio.org/post/transgender-professor-sues-saginaw-valley-state-university-alleged-discrimination>.

⁴⁹ Gail Schontzler, *Gay Couple’s Dream of Adopting Ends in Bias Charge against Montana*, BOZEMAN DAILY CHRONICLE, Aug. 7, 2016, http://www.bozemandailychronicle.com/news/gay-couple-s-dream-of-adopting-ends-in-bias-charge/article_9dde90ec-45d7-5734-82cb-81f0c0f18e17.html.

⁵⁰ Compl. at 1-3, 5-6, *Mattis v. Sch. Dist. of Pickens Cty.*, No. 2016-CP-39-01232 (Ct. Com. Pl. Oct. 26, 2016). *Id.* at 5-6.

⁵¹ *Id.* at 6, 9.

⁵² *Id.*

⁵³ *Id.* at 9-10.

⁵⁴ Order of Dismissal, *Mattis v. Sch. Dist. of Pickens Cty.*, No. 8:16-cv-03679-MGL-JDA (D. S.C. Oct. 25, 2017), ECF No.

- In 2015, an employee of the University of Kansas reported that his supervisor regularly addressed him with derogatory language associated with gay men and sexually harassed him on multiple occasions. The university twice rejected requests to investigate, as well as his formal complaint. The employee appealed the decision to the university's vice provost and then agreed to mediation facilitated by the Kansas Human Rights Commission.⁵⁵
- In 2014, a lesbian police detective in Austin, Texas filed a lawsuit against the department for sexual harassment. The detective alleged that her male colleagues would "show her pornographic images of women, make explicit and inappropriate comments and ask [her] if she would have sex with [female victims or suspects they encountered]."⁵⁶ In 2017, the Austin Police Department settled the lawsuit for \$40,000.⁵⁷
- The grandparents and guardians of a transgender six-year-old child reported in testimony to the Michigan Department of Civil Rights that their granddaughter's public school refused to accept her transition, and instead continued to treat her like a boy.⁵⁸ The grandparents transferred the girl to a school in a different city, which resulted in significant hardship for the family: "[T]he mileage and wear and tear on the vehicles plus all of the gasoline that we were using at four dollars a gallon was more than we could bear. After one year... we decided that we would, as a family, have to sell our beautiful home in our great neighborhood and move closer to Ann Arbor."⁵⁹
- In 2013, the Louisville Metro Human Relations Commission found in favor of a gay Audubon Park police sergeant who was terminated after experiencing three years of verbal harassment. The case was settled privately. According to reports, anti-gay jokes were told in front of him, he was called derogatory names, and his co-worker told others that he took medical leave due to injuries from sex with his partner. The sergeant was fired after complaining about the mistreatment to his police chief.⁶⁰
- In 2013, a transgender police officer working for a sheriff's department in Idaho was told by her sheriff that several state administrators said that they would have fired her on the spot after she notified him that she was transitioning, regardless of potential legal consequences; they would rather "pay out than deal with [her]."⁶¹
- In 2013, an Ohio appellate court denied relief to a gay bus driver who claimed that he was harassed by his co-workers because of his sexual orientation.⁶² Although the court held that sexual orientation was not a protected class under the state's non-

⁵⁵ Celia Llopis-Jepsen, *KU Under Fire for Handling of LGBT Discrimination Claim*, TOPEKA CAPITAL JOURNAL, <https://www.cjonline.com/news/2015-12-10/ku-under-fire-handling-lgbt-discrimination-claim>.

⁵⁶ Ciara O'Rourke, *Austin Officer's Suit Alleges Retaliation*, AUSTIN AMERICAN-STATESMAN, Dec. 30, 2014, at B1.

⁵⁷ Tony Plohetski and Joe Ellis, 'Vast Majority' of sex harassment lawsuits settled in secret, KVUEabc, February 8, 2018, <https://www.kvue.com/article/news/local/quiet-no-more-kvue-live-doc-on-central-texas-sex-harassment-problem/269-515726662>.

⁵⁸ MICHIGAN DEPARTMENT OF CIVIL RIGHTS, REPORT ON LGBT INCLUSION UNDER MICHIGAN LAW WITH RECOMMENDATIONS FOR ACTION 59 (2013).

⁵⁹ *Id.* at 59-60.

⁶⁰ Andrew Wolfson, *Fired Gay Cop Details Harassment Allegations*, USATODAY.COM, Oct. 9, 2013, <http://www.usatoday.com/story/news/nation/2013/10/09/fired-gay-cop-details-harassment-allegations-/2956645/>.

⁶¹ E-mail from Danielle Lundgren, Detective, Sheriff's Office in E. Idaho, to Amira Hasenbush, Jim Kepner Law and Policy Fellow, The Williams Inst. (May 4, 2014, 10:14 PM PST) (on file with author).

⁶² *Inskeep v. W. Reserve Transit Auth.*, 2013 WL 979054, *6 (Ohio Ct. App. Mar. 8, 2013).

discrimination law, and therefore, he had no remedy for any alleged harassment,⁶³ the facts alleged demonstrate the type of discrimination that the Equality Act would address.

- In 2013, a gay juvenile corrections officer in Mississippi reported that he was terminated after his department discovered his sexual orientation in a police report.⁶⁴ The officer had called police when his boyfriend became physically violent towards him in his apartment.⁶⁵
- In 2012, a volleyball coach filed an internal complaint with Virginia Commonwealth University alleging that the school fired him because he was gay.⁶⁶ The coach had a successful coaching career at VCU for eight years, and had just coached the team to its most successful season under his tenure, but he was terminated shortly after a new athletics director was hired.⁶⁷ The new athletics director also demoted another openly gay employee in the athletics department that same week, who had worked for VCU for over three decades.⁶⁸ VCU's vice president of equity and diversity said that the openly gay staffer and the coach were the only two employees in the athletics department to experience changes in their jobs after the new director arrived. Although a petition to reinstate the volleyball coach received over 51,000 signatures,⁶⁹ an internal investigation by VCU concluded that the termination was not discriminatory and the coach took a job at another university.
- In 2011, the Lake County School Board in Florida refused to allow the formation of a Gay-Straight Alliance club at Carver Middle School, and, when this decision was challenged in court, the School Board spent years in the court system defending its position. The Eleventh Circuit ruled that the Equal Access Act required the school to permit students to form the club.⁷⁰
- In 2011, Cuyahoga County, Ohio settled a lawsuit with a lesbian employee of the County Child Support Enforcement Agency for \$100,000.⁷¹ The child support worker stated that she was passed over for at least 12 promotions only to learn that the positions were given to less qualified heterosexual applicants.⁷²

⁶³ *Id.* at *4.

⁶⁴ John D. Sutter, *Opinion: No One Should Be Fired for Being Gay*, CNN.COM, Mar. 22, 2013, http://www.cnn.com/2013/03/22/opinion/sutter-employment-discrimination-lgbt/?hpt=hp_c1.

⁶⁵ *Id.*

⁶⁶ Jeffrey H. Martin, *Fired Gay VCU Coach Has New Job in Mind: His Old One*, USATODAY.COM, Dec. 20, 2012, <http://www.usatoday.com/story/sports/college/volleyball/2012/12/19/james-finley-fired-vcu-volleyball-investigation/1780795/>; Lou Chibbaro Jr., *Gay Coach Fired at VCU*, WASHINGTONBLADE.COM, <http://www.washingtonblade.com/2012/12/06/gay-coach-fired-at-vcu/>.

⁶⁷ Zachary Reid Richmond, *VCU Says Firing of Gay Women's Volleyball Coach Not Discriminatory*, Dec. 20, 2012, http://www.timesdispatch.com/sports/college/vcu/vcu-says-firing-of-gay-women-s-volleyball-coach-not/article_c2adebc8-4af2-11e2-a1d8-0019bb30f31a.html.

⁶⁸ Mechelle Hankerson, *Administration Will Investigate Former Volleyball Coach's Firing*, COMMONWEALTHTIMES.COM, <http://www.commonwealthtimes.org/2012/12/03/administration-will-investigate-former-volleyball-coachs-firing/>.

⁶⁹ Reinstate Coach Finley, change.org, at <https://www.change.org/p/vcu-president-michael-rao-reinstate-coach-finley>

⁷⁰ Carver Middle School Gay-Straight Alliance v. School Board of Lake County, Florida, 842 F.3d 1324 (11th Cir. 2016). See also, Press Release, American Civil Liberties Union of Florida, Federal Appeals Court Upholds Students' Rights in Gay-Straight Alliance Case (Dec. 6, 2016), <https://aclufl.org/2016/12/06/federal-appeals-court-upholds-students-rights-in-gay-straight-alliance-case/>.

⁷¹ Settlement, Shari Hutchinson v. Cuyahoga Cnty. Bd. of Comm'rs, et al., No. 08-CV-02966, 2011 WL 7560489 (N.D. Ohio Sept. 28, 2011).

⁷² *Id.*

- In 2010, the State of Pennsylvania settled a case brought by a state prison guard who was subject to discrimination because he was perceived to be gay.⁷³ Other guards subjected the victim to rumors, innuendo, and other ill treatment based on their perception of his sexual orientation.

IV. The Federal Agencies Principally in Charge of Enforcing the Nation's Civil Rights Acts Have Documented Discrimination Against LGBT People, Including Unconstitutional Discrimination

In the last decade, the federal administrative agencies charged with enforcing and evaluating our nation's civil rights laws, including the Department of Justice, the U.S. Civil Rights Commission, and the Equal Employment Opportunity Commission, have recognized and documented that LGBT people face wide a widespread pattern of discrimination.

A. United States Department of Justice

In 2011, the U.S. Department of Justice determined that sexual orientation discrimination is entitled to heightened scrutiny, applying the factors articulated by the Supreme Court. The Department reasoned:

Each of these factors counsels in favor of being suspicious of classifications based on sexual orientation. First and most importantly, there is, regrettably, a significant history of purposeful discrimination against gay and lesbian people, by governmental as well as private entities, based on prejudice and stereotypes that continue to have ramifications today. Indeed, until very recently, states have “demean[ed] the[] existence” of gays and lesbians “by making their private sexual conduct a crime.” *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).... Third, the adoption of laws like those at issue in *Romer v. Evans*, 517 U.S. 620 (1996), and *Lawrence*, the longstanding ban on gays and lesbians in the military, and the absence of federal protection for employment discrimination on the basis of sexual orientation show the group to have limited political power and “ability to attract the [favorable] attention of the lawmakers.” *Cleburne*, 473 U.S. at 445...Finally, there is a growing acknowledgment that sexual orientation “bears no relation to ability to perform or contribute to society.” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality). Recent evolutions in legislation (including the pending repeal of Don't Ask, Don't Tell), in community practices and attitudes, in case law (including the Supreme Court's holdings in *Lawrence* and *Romer*), and in social science regarding sexual orientation all make clear that sexual orientation is not a characteristic that generally bears on legitimate policy objectives. See, e.g., Statement by the President on the Don't Ask, Don't Tell Repeal Act of 2010 (“It is time to recognize that sacrifice, valor and integrity are no more defined by sexual orientation than they are by race or gender, religion or creed.”)... After careful consideration, including a review of my recommendation, the President has concluded that given a number of factors, including a documented history of discrimination,

⁷³ *Pa. Prison Guard Settles Sex Perception Bias Suit*, CBS3, May 6, 2010, <http://cbs3.com/wireapnews/pa/Western.Pa.prison.2.1678589.html> (last visited May 12, 2010).

classifications based on sexual orientation should be subject to a heightened standard of scrutiny. (internal footnotes omitted).⁷⁴

The Department of Justice elaborated on this position in its brief filed in *U.S. v. Windsor*.⁷⁵

B. United States Commission on Civil Rights

In 1957, the U.S. Commission on Civil Rights (USCCR) was “established as an independent, bipartisan, fact-finding federal agency” to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws.”⁷⁶ In the past decade, USCCR has conducted a number of studies on LGBT people relevant to the Equality Act. For example, in 2017, the USCCR investigated employment discrimination against LGBT people and published a comprehensive report with the following key findings and recommendations:

- Historians, researchers, and courts have extensively documented that lesbian, gay, bisexual, and transgender (LGBT) workers have faced a long, serious, and pervasive history of official and unofficial employment discrimination by both federal, state, and local governments and private employers.
- Federal data sources do not effectively capture rates of LGBT employment or rates of LGBT employment discrimination.
- An inconsistent and irreconcilable patchwork of state laws against anti-LGBT workplace discrimination and federal court decisions interpreting existing federal law render LGBT employees insufficiently protected from workplace discrimination...
- In order to effectively and consistently protect LGBT employees from workplace discrimination, Congress should immediately enact a federal law explicitly banning discrimination in the workplace based on sexual orientation and gender identity...⁷⁷

The findings were based, in part, on an extensive hearing on employment discrimination on the basis of sexual orientation and gender identity.⁷⁸ In a number of other reports relevant to the Equality Act, USCCR has considered:

- widespread anti-LGBT state legislation and ballot initiatives;⁷⁹

⁷⁴ Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011), <https://www.justice.gov/opa/pr/letter-attorney-general-congress-litigation-involving-defense-marriage-act> (Applying the following factors “(1) whether the group in question has suffered a history of discrimination; (2) whether individuals “exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group”; (3) whether the group is a minority or is politically powerless; and (4) whether the characteristics distinguishing the group have little relation to legitimate policy objectives or to an individual’s “ability to perform or contribute to society.”)

⁷⁵ Brief for the United States, *U.S. v. Windsor*, 570 U.S. 744 (2013 available at https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-307_pet_usa_merits.pdf.)

⁷⁶ Mission, U.S. Comm. on Civil Rights, <https://www.usccr.gov/about/index.php> (last visited Apr. 10, 2019).

⁷⁷ WORKING FOR INCLUSION, U.S. COMM. ON CIVIL RIGHTS (2017), https://www.usccr.gov/pubs/docs/LGBT_Employment_Discrimination2017.pdf.

⁷⁸ Briefing on Examining Workplace Discrimination against Lesbian, Gay, Bisexual, and Transgender Americans, U.S. Comm. on Civil Rights (Mar. 16, 2015), https://www.usccr.gov/calendar/trnscrpt/Discrimination_LGBT_03-16-2015.pdf.

⁷⁹ PEACEFUL COEXISTENCE: RECONCILING NONDISCRIMINATION PRINCIPLES WITH CIVIL LIBERTIES 32-40 (2016); See p 32-40 <https://www.usccr.gov/pubs/docs/Peaceful-Coexistence-09-07-16.PDF>; Statement on Condemning Recent State Law and Pending

- the extensive bullying that LGBT students face in school (“Surveys report that anti-LGBT bullying is rampant in American schools.”);⁸⁰
- the harassment and violence LGBT people face from state and local law enforcement (“Police use of force against lesbian, gay, bisexual, and transgender (LGBT) communities is a pervasive yet under-addressed national issue...LGBT communities have a long-troubled history with law enforcement. Despite the recent gains in civil rights for these communities, disparate treatment of LGBT individuals in the criminal justice system is a persistent problem...Moreover, LGBT complaints about police misconduct often go unaddressed.”);⁸¹ and
- the widespread discrimination faced by transgender Americans. (“The [t]ransgender community is a uniquely vulnerable community and many of the Commission’s recent investigations highlight the discrimination and significant health, social, and economic barriers they face.”)⁸²

Finally, USCCR has fifty-one State Advisory Committees (SACs) that serve as the “eyes and ears” of the Commission in their respective locations. These state committees have also documented discrimination and violence against LGBT people in a number of states, including Arkansas,⁸³ Illinois,⁸⁴ Minnesota,⁸⁵ Missouri,⁸⁶ Oregon,⁸⁷ Wisconsin,⁸⁸ and West Virginia.⁸⁹

[Proposals Targeting the Lesbian, Gay, Bisexual, and Transgender Community, U.S. Comm. on Civil Rights \(Apr. 16, 2019\),
https://www.usccr.gov/press/2016/PR_Statement_LGBTDiscrimination.pdf.](https://www.usccr.gov/press/2016/PR_Statement_LGBTDiscrimination.pdf)

⁸⁰ PEER-TO-PEER VIOLENCE & BULLYING: EXAMINING THE FEDERAL RESPONSE, U.S. COMM. ON CIVIL RIGHTS 15-20, 48-56 (2011), <https://www.usccr.gov/pubs/docs/2011statutory.pdf> (“At least one study has found that, after physical appearance, many students report that actual or perceived sexual orientation is the most common reason for bullying, name-calling, or harassment in schools. Many believe that anti-LGBT bullying results from general animus toward LGBT students and a stigmatization of homosexuality.”); Briefing, U.S. Comm. on Civil Rights (May 13, 2011), https://www.usccr.gov/calendar/trnsrpt/Transcript_05-13-11.pdf.

⁸¹ POLICE USE OF FORCE: AN EXAMINATION OF MODERN POLICING PRACTICES, U.S. COMM. ON CIVIL RIGHTS 4, 7 (2015), <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf> (“The best available evidence reflects high rates of use of force nationally, and increased likelihood of police use of force against people of color, people with disabilities, LGBT people, people with mental health concerns, people with low incomes, and those at the intersections of these groups.” “The negative effects of uneven policing practices against particular communities (e.g., racial and ethnic, LGBT, immigrant, disability) are well documented in the social science literature.”). See also WITH LIBERTY AND JUSTICE FOR ALL: THE STATE OF CIVIL RIGHTS ENFORCEMENT AT IMMIGRANT DETENTION FACILITIES, U.S. COMM. ON CIVIL RIGHTS (2015), https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf (discussion of treatment of LGBT people detained in immigration detention facilities).

⁸² Letter from the U.S. Comm. on Civil Rights to Alex M. Azar II, Secretary, U.S. Dep’t of Health and Human Svcs. (Dec. 7, 2018), <https://www.usccr.gov/press/2018/12-07-Transgender-Letter-to-Health-Human-Services.pdf>.

⁸³ ARK. ADVISORY COMM. TO THE U.S. COMM. ON CIVIL RIGHTS, GUARDING CIVIL RIGHTS IN ARKANSAS: THE NEED FOR A STATE CIVIL RIGHTS AGENCY (2015), https://www.usccr.gov/pubs/docs/Arkansas_GuardingCivilRights.pdf.

⁸⁴ ILL. STATE ADVISORY COMM. TO THE U.S. COMM. ON CIVIL RIGHTS, HATE CRIME AND DISCRIMINATION AGAINST RELIGIOUS INSTITUTIONS IN ILL. (2015), https://www.usccr.gov/pubs/docs/06-03-15_HateCrimesStateAdvisory.pdf.

⁸⁵ MINN. ADVISORY COMM. TO THE U.S. COMM. ON CIVIL RIGHTS, CIVIL RIGHTS AND POLICING PRACTICES IN MINN. (2018), <https://www.usccr.gov/pubs/2018/03-22-MN-Civil-Rights.pdf>.

⁸⁶ Mo. Advisory Comm. to the U.S. Comm. on Civil Rights, The Impact of Community/Police Interactions on Individual Civil Rights in Mo. (2016), https://www.usccr.gov/pubs/docs/MOPoliceRelationsReport_Publish.pdf.

⁸⁷ Ore. Advisory Comm. to the U.S. Comm. on Civil Rights, Civil Rights in Oregon: Issues and Concerns Moving into the 21st Century (2015), https://www.usccr.gov/pubs/docs/OR_SAC_StatusofCivilRights-WebV.pdf.

⁸⁸ WIS. ADVISORY COMM. TO THE U.S. COMM. ON CIVIL RIGHTS, HATE CRIME AND CIVIL RIGHTS IN WIS. (2017), <https://www.usccr.gov/pubs/docs/08-17-Wisconsin-hate-crimes.pdf>.

⁸⁹ W.V. ADVISORY COMM. TO THE U.S. COMM. ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES IN WEST VIRGINIA (2003), <https://www.usccr.gov/pubs/sac/wv0503/wvreport.pdf>.

C. The Equal Employment Opportunity Commission (EEOC)

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate in employment, including Title VII of the Civil Rights Act of 1964. The EEOC has interpreted Title VII's ban on sex discrimination to prohibit discrimination against employees on the basis of sexual orientation and gender identity.⁹⁰ For example, in *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (April 20, 2012), the Commission held that intentional discrimination against a transgender individual because of that person's gender identity is, by definition, discrimination based on sex and therefore violates Title VII.⁹¹

In *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015), the Commission held that a claim of discrimination on the basis of sexual orientation necessarily states a claim of discrimination on the basis of sex under Title VII.⁹² A growing number of court decisions have endorsed the Commission's interpretation of Title VII.⁹³

From 2013 to 2017, the EEOC received over 6,800 complaints of employment discrimination on the basis of sexual orientation and gender identity.⁹⁴ The EEOC lists on its website more information about how these complaints were resolved and specific examples of unlawful discrimination in these claims.⁹⁵ The EEOC reports that it has obtained approximately \$6.4 million in monetary relief for these individuals, as well as numerous employer policy changes. In several cases, the Commission has filed LGBT-related lawsuits under Title VII challenging alleged sex discrimination.⁹⁶

⁹⁰ See, e.g., Brochure on Preventing Employment Discrimination Against Lesbian, Gay, Bisexual, or Transgender Employees, U.S. E.E.O.C., https://www.eeoc.gov/eeoc/publications/brochure-gender_stereotyping.cfm (last visited Apr. 10, 2018).

⁹¹ Applying *Macy*, the Commission has also held that an employer's restrictions on a transgender woman's ability to use a common female restroom facility constitutes disparate treatment, *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), that intentional misuse of a transgender employee's new name and pronoun may constitute sex-based discrimination and/or harassment, *Jameson v. U.S. Postal Service*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013), and that an employer's failure to revise its records pursuant to changes in gender identity stated a valid Title VII sex discrimination claim, *Complainant v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120133123, 2014 WL 1653484 (Apr. 16, 2014).

⁹² Similarly, in *Larita G. v. U.S. Postal Service*, EEOC Appeal No. 0120142154 (Nov. 18, 2015), the EEOC reversed the Agency's dismissal of a hostile work environment claim on the basis of sexual orientation because such an allegation is necessarily an allegation of sex discrimination under Title VII.

⁹³ See Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII, U.S. E.E.O.C., https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm (last visited Apr. 10, 2019); Federal Sector Cases Involving LGBT Individuals, U.S. E.E.O.C. www.eeoc.gov/federal/reports/lgbt_cases.cfm (last visited Apr. 10, 2019).

⁹⁴ LGBT-Based Sex Discrimination Charges, U.S. E.E.O.C., https://www.eeoc.gov/eeoc/statistics/enforcement/lgbt_sex_based.cfm (last visited Apr. 10, 2019).

⁹⁵ *Id.* "Failing to hire an applicant because she is a transgender woman.

- Firing an employee because he is planning or has made a gender transition.
- Denying an employee equal access to a common restroom corresponding to the employee's gender identity.
- Harassing an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun that correspond to the gender identity with which the employee identifies, and which the employee has communicated to management and employees.
- Denying an employee a promotion because he is gay or straight.
- Discriminating in terms, conditions, or privileges of employment, such as providing a lower salary to an employee because of sexual orientation, or denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.
- Harassing an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.
- Discriminating against or harassing an employee because of his or her sexual orientation or gender identity, in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability

⁹⁶ Fact Sheet on Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination, U.S. E.E.O.C., https://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm (last visited Apr. 10, 2019) (examples of pending and resolved EEOC litigation involving Title VII sex discrimination claims brought on behalf of LGBT individuals, as well as EEOC amicus briefs filed in suits brought by private individuals raising these issues).

A more recent analysis of complaints filed with the EEOC alleging discrimination based on sexual orientation or gender identity found that claims of discrimination are filed by government workers and private sector employees at similar rates. In analyzing 9,000 claims filed alleging such discrimination from 2013 to the present, researchers found that 1,151 charges were filed by state and local government employees. This number represents 12% of the sexual orientation and gender identity complaints filed during that time period, while about 10% of state and local government workers are LGBT.⁹⁷

V. The Equality Act Addresses the Pattern of Explicit Discrimination by State Governments That Continues to Make LGBT People Vulnerable Today

The unconstitutional and discriminatory violations that Congress seeks to address with the Equality Act are not just the actions of isolated individuals or even subunits of a state. In our recent past and continuing through the present, these violations have been grounded in, and a result of, explicit discrimination in state law and policy. These discriminatory laws and policies have invited discrimination by public and private actors in all of the areas covered by the Equality Act. They have communicated that stigma and adverse treatment of LGBT people are officially condoned—a message that reverberates beyond the specific focus of any individual state law or policy and that sanctions treating LGBT people as undeserving of equal treatment. Even when these laws and policies have been repealed or declared unconstitutional, their impact still lingers, and some states have actively resisted the Supreme Court and other federal and state court decisions finding such discrimination unconstitutional.

As you are aware, the Supreme Court has decided a number of cases finding discrimination against LGBT people to be unconstitutional, including *Romer v. Evans*,⁹⁸ *Lawrence v. Texas*,⁹⁹ *U.S. v. Windsor*,¹⁰⁰ and *Obergefell v. Hodges*.¹⁰¹ In these cases, the Supreme Court repeatedly recognized the impact of unconstitutional and discriminatory laws and policies of state governments, including that laws prohibiting sodomy and laws prohibiting same-sex couples from marrying have stigmatized LGB people and their families, sending a message of disapproval to state agencies and their employees, as well as more broadly to the public and private sectors. The message sent by these laws and policies has licensed, if not encouraged, discrimination against LGBT people in the areas covered by the Equality Act.

- As Justice O'Connor stated in *Lawrence*: anti-sodomy laws “legally sanction[] discrimination against homosexuals in a variety of ways unrelated to the criminal law, including in the areas of employment, family issues, and housing.”¹⁰²
- The Court also explained in *Obergefell* that excluding same-sex couples from marriage “results in more than just material burdens...exclusion from that status has the effect of

⁹⁷ Equality Act, Hearing on H.R. 5 Before the Comm. on Educ. and Labor, 116th Cong. (2019) (written testimony of M.V. Lee Badgett, Professor of Economics, Univ. Mass. Amherst).

⁹⁸ 517 U.S. 620 (1996).

⁹⁹ 539 U.S. 558 (2003).

¹⁰⁰ 570 U.S. 744 (2014).

¹⁰¹ 135 S. Ct. 2584 (2015).

¹⁰² *Lawrence*, 539 U.S. at 582 (O'Connor, J., concurring) (internal citations omitted).

teaching that gays and lesbians are unequal in important respects. It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society."¹⁰³

- Similarly, Justice Kennedy wrote in his majority opinion in *Windsor* that failing to recognize the marriages of same-sex couples “tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition... The differentiation demeans the couple, whose moral and sexual choices the Constitution protects... and it humiliates tens of thousands of children now being raised by same-sex couples.”¹⁰⁴

The Court emphasized that the discriminatory state laws not only stigmatize LGB people in all aspects of public life, but that stigma lasts for many years—even after the laws have been repealed or struck down. As the court explained in *Obergefell*,

...in effect, *Bowers* upheld state action that denied gays and lesbians a fundamental right and caused them pain and humiliation... That is why *Lawrence* held *Bowers* was ‘not correct when it was decided.’ 539 U. S., at 578. Although *Bowers* was eventually repudiated in *Lawrence*, men and women were harmed in the interim, and the substantial effects of these injuries no doubt lingered long after *Bowers* was overruled. Dignitary wounds cannot always be healed with the stroke of a pen... A ruling against same-sex couples would have the same effect—and, like *Bowers*, would be unjustified under the Fourteenth Amendment...¹⁰⁵

And further, “Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them.”¹⁰⁶

Unfortunately, for some states, this history of explicit discrimination by statute and policy is not an artifact of the past; it continues to this day. Many states maintain laws on the books that explicitly stigmatize—or can be used to stigmatize—LGBT people; continue to pass or consider legislation and policies that explicitly discriminate against LGBT people; block the attempts of local governments to protect LGBT people; and ignore or undermine the Supreme Court’s decisions in *Romer*, *Lawrence*, *Windsor*, and *Obergefell*. For example:

- Prior to 1961, sodomy was a felony in every state, punishable by lengthy imprisonment or death.¹⁰⁷ Thirteen states continued to criminalize same-sex behavior in 2003, when the Supreme Court struck down these laws in *Lawrence v. Texas*.¹⁰⁸ Although these laws are legally unenforceable, some states have nonetheless maintained them on the

¹⁰³ *Obergefell v. Hodges*, 135 S. Ct. at 2601-02.

¹⁰⁴ *Windsor*, 570 U.S. at 772.

¹⁰⁵ *Obergefell*, 135 S. Ct. at 2606.

¹⁰⁶ *Id.* at 2590-91.

¹⁰⁷ ACLU, History of Sodomy Laws and the Strategy that Led up to Today’s Decision, <https://www.aclu.org/other/history-sodomy-laws-and-strategy-led-todays-decision> (last visited Apr. 10, 2019).

¹⁰⁸ See BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT: THE LEGACY OF DISCRIMINATORY STATE LAWS, POLICIES, AND PRACTICES, 1945-PRESENT 5-47 (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/5_History.pdf.

books,¹⁰⁹ thereby prolonging their stigmatizing effect and resulting in rare, but continued, arrests.¹¹⁰

- Many states purged LGBT employees beginning after World War II and continuing through the 1980s and 1990s. These purges often focused on LGBT people employed at state universities and colleges.¹¹¹
- More than 1,100 occupations are either licensed, certified, or registered by state governments, and over 40% of public employees in the United States are in professions that require professional licenses issued by state governments. Many of these licenses have moral fitness requirements that for decades meant LGBT people could not be open about who they were and obtain or maintain their license. These requirements remain common for occupational licenses today.¹¹²
- There is a long history of state and local law enforcement prohibiting or raiding public accommodations that served LGBT people. Historically, many states had laws or ordinances that prohibited public accommodations from allowing “known homosexuals” to congregate or selling alcoholic beverages to LGBT people.¹¹³ For example, until a federal court declared Virginia’s ordinance unconstitutional in 1991, it stated “a bar’s license may be suspended or revoked if the bar has become a meeting place and rendezvous for...homosexuals.”¹¹⁴ These anti-LGBT policies continue to have lingering effects. As recently as 2013, a town in Mississippi denied a license to someone who wanted to open a bar for the LGBT community. It would have been the only such establishment in 100 miles.¹¹⁵
- Due to policies by state and local governments, including the legacy of sodomy laws and ordinances allowing law enforcement agencies to raid LGBT establishments, LGBT people are disproportionately likely to come into contact with the criminal justice system and be incarcerated, particularly LGBT youth and transgender people. Once incarcerated, they face violence and harassment and discriminatory policies segregating them, denying them needed medical care and other services, and violating their rights to privacy. The over-incarceration of LGBT people has life-long consequences which

¹⁰⁹ *Id.* At 5-47 to 5-49. In another example of resistance to the Court’s protection of LGBT people, the day after the Court issued the *Lawrence* decision, members of the Topeka and Shawnee County public library staff ordered an employee to never again speak about the decision at work. In response to a letter from the ACLU, the library admitted that it cannot forbid one of its employees from talking about a Supreme Court decision while at work. Press Release, ACLU, Kansas Public Library Concedes That it Can’t Censor Employee for Discussing Historic Sodomy Ruling (Aug. 5, 2003), available at <https://www.aclu.org/news/kansas-public-library-concedes-it-cant-censor-employee-discussing-historic-sodomy-ruling>.

¹¹⁰ Julie Compton, *American Men Are Still Being Arrested for Sodomy*, ADVOCATE (May 23, 2016), <https://www.advocate.com/crime/2016/5/23/american-men-are-still-being-arrested-sodomy>.

¹¹¹ *Id.* at 5-1 to 5-9.

¹¹² *Id.* at 5-56 to 5-71.

¹¹³ Patricia A. Cain, *Litigating for Lesbian and Gay Rights: A Legal History*, 79 VA. L. REV. 1551, 1567-71 (1993).

¹¹⁴ Out History, ABC Regulations Challenged in Court, <http://outhistory.org/exhibits/show/rainbow-richmond/the-fight-continues/abc-regulations> (last visited Apr. 10, 2019).

¹¹⁵ Nick Sibilla, *How Liquor Licenses Sparked the Stonewall Riots*, REASON (June 28, 2019), <https://reason.com/archives/2015/06/28/how-liquor-licenses-sparked-stonewall/print>.

impairs their ability to seek employment, housing, vote, serve as jurors, and access public accommodations and government benefits and services.¹¹⁶

- Until recently, many states did not allow transgender people to change their gender markers on their birth certificates, drivers' licenses, or other government identification documents, and several jurisdictions still require proof of surgery in order to change gender markers.¹¹⁷ These policies burden transgender people's ability to find employment, secure housing, obtain public benefits, and engage in constitutionally protected activities such as voting.¹¹⁸
- A number of states have considered ballot initiatives that would prevent LGBT people from teaching, and anti-gay provisions exist in the curriculum laws of nineteen states.¹¹⁹ Currently at least six states—Alabama, Louisiana, Mississippi, Oklahoma, South Carolina, and Texas—have anti-LGBT curriculum laws that expressly call out LGBT issues for disfavored treatment in schools.¹²⁰ For example, Alabama and Texas specifically mandate that, in certain curricula related to sexual health education, students must be taught that being gay “is not a lifestyle acceptable to the general public.” Research has shown these laws create an environment that is hostile to LGBT youth and teachers.¹²¹
- Between the mid-1990s and 2012, most states passed either a statutory or constitutional prohibition, or both, related to marriage for same-sex couples.¹²² Many states continued to have laws that denied marriage licenses to same-sex couples, or that prohibited the state from recognizing valid same-sex marriages from elsewhere, until the Supreme Court decisions in *U.S. v. Windsor* and *Obergefell v. Hodges*.¹²³ Indeed, some state

¹¹⁶ See JODY MARKSAMER & HARPER JEAN TOBIN, NAT'L CTR. FOR TRANSGENDER EQUALITY, *STANDING WITH LGBT PRISONERS: AN ADVOCATE'S GUIDE TO ENDING ABUSE AND COMBATING IMPRISONMENT* (2013), http://www.transequality.org/sites/default/files/docs/resources/JailPrisons_Resource_FINAL.pdf.

¹¹⁷ Identity Documents Law and Policies, Movement Advancement Project, last access on April 15, 2019 at <https://transgenderlawcenter.org/equalitymap>.

¹¹⁸ Scott Skinner-Thompson, *Why Trans People Have a Constitutional Right to Change Their Birth Certificates*, SLATE, April 27, 2017 at <https://slate.com/human-interest/2017/04/transgender-people-have-a-constitutional-right-to-change-their-birth-certificates.html>.

¹¹⁹ Clifford Rosky, *Anti-Gay Curriculum Laws*, 117 COLUMBIA L. REV. 1461, 1465 (2017). Arizona repealed its anti-LGBT curriculum law in April 2019. Howard Fischer, *Governor Signs off on Repeal of Arizona's "No Promo Homo" Law*, TUCSON.COM, Apr. 12, 2019, https://tucson.com/news/local/governor-signs-off-on-repeal-of-arizona-s-no-promo/article_bc92ff60-fc17-5c91-9c6b-c22e116de58a.html.

¹²⁰ Lambda Legal, #DontEraseUs: FAQ about Anti-LGBT Curriculum Laws, <https://www.lambdalegal.org/dont-erase-us/faq> (last visited Apr. 10, 2019).

¹²¹ GLSEN, *LAWS THAT PROHIBIT THE "PROMOTION OF HOMOSEXUALITY": IMPACTS AND IMPLICATIONS* (2018), https://www.glsen.org/sites/default/files/GLSEN%20Research%20Brief%20-%20No%20Promo%20Homo%20Laws_1.pdf. In addition, the false and negative stereotypes about LGBT people harming children in public education continue. For example, as recently as 2014, a Florida state representative reportedly claimed that the company hired to design a new standardized test for Florida schools was attempting to “attract every one of your children to become as homosexual as they possibly can.” Dave Elias, *FL State Rep: School Tests Designed to Turn Students Gay*, NBC 2 (May 20, 2014), <http://www.nbc-2.com/story/25568931/fl-state-rep-school-tests-designed-to-turn-students-gay>.

¹²² See Los Angeles Times Staff, *Timeline Gay Marriage Chronology*, LA Times (June 26, 2015), <http://graphics.latimes.com/usmap-gay-marriage-chronology/>.

¹²³ *Id.*

judges,¹²⁴ county clerks and other employees,¹²⁵ and legislatures also continue to resist implementing court decisions declaring discrimination against LGBT people unconstitutional. In fact, just last month, the Alabama Senate voted unanimously to abolish marriage licenses in the state rather than comply with Obergefell.¹²⁶

- In 2016, North Carolina passed HB 2, a law that nullified existing and prevented new local protections against sexual orientation and gender identity discrimination, and that discriminated against transgender people.¹²⁷
- In 2017, Mississippi passed a law that explicitly stated that businesses and governments could discriminate against LGBT individuals based on religious objection.¹²⁸ In the same year, Tennessee passed a law that said “undefined words” in state law had to be given their ordinary meaning.¹²⁹ Another proposed bill specified that those words were “husband, wife, mother, and father.”¹³⁰ The intent of this type of legislation is to limit the impact of the Supreme Court’s marriage equality decisions in Windsor and Obergefell, permitting discrimination against same-sex couples by the state and in the private sector.
- In 2018, Kansas and Oklahoma passed bills that allow adoption agencies receiving taxpayer funds to refuse to work with same-sex couples looking to expand their families.¹³¹ In 2015, the Secretary of the Kansas Department for Children and Families stated that the preferred situation is for “every child to have a mom and dad, if possible,” suggesting that same-sex couples are less desirable parents,¹³² despite a wealth of research to the contrary.
- Last year, state legislatures considered over 150 bills that would have either explicitly discriminated against LGBT people or sought to preclude them from full protection under state and local anti-discrimination laws.¹³³

Accordingly, based on (a) extensive examples of, and research documenting, discrimination against LGBT people by state governments, as well as by local governments and in the private sector; (b) state laws and policies, past and present, that explicitly discriminate against LGBT people—policies which, in turn, impose stigma that invite discrimination in all of the areas covered by the Act; and (c)

¹²⁴ In 2014, a judge in Wyoming refused to perform marriages for same-sex couples as part of her official duties. The Wyoming Commission on Judicial Conduct and Ethics issued a recommendation that she be removed from office. The judge appealed and the Wyoming Supreme Court instead ordered that the judge either perform marriages for same-sex couples or cease performing any marriages. Buckrail, *Wyoming State Supreme Court Rules on Judge Who Refuses to Perform Same-Sex Marriages*, KTVQ.COM, Mar. 8, 2017, <http://www.ktvq.com/story/34696697/wyoming-state-supreme-court-rules-on-judge-who-refuses-to-perform-same-sex-marriages>.

¹²⁵ In 2014, a local clerk of court in Yellowstone County refused to issue marriage licenses to same-sex couples after a federal court ruled that the state’s ban on marriage for same-sex couples was unconstitutional. John S. Adams, *LGBT Community Pushing New Legislation*, GREAT FALLS TRIBUNE (Dec. 30, 2014).

¹²⁶ AP, *Alabama Senate Passes Bill to End Marriage Licenses*, AL.COM (Mar. 21, 2019), <https://www.al.com/news/2019/03/alabama-senate-passes-bill-to-end-marriage-licenses.html>.

¹²⁷ N.C. HB 2, Gen. Assem., Reg. Sess. (N.C. 2016) (enacted).

¹²⁸ Miss. HB 1523, Miss. Leg., Reg. Sess. (Miss. 2017) (enacted).

¹²⁹ Tenn. HB 1111, Gen. Assem., Reg. Sess. (Tenn. 2017) (enacted).

¹³⁰ Brandon Voss, *Tennessee Law about “Natural Ordinary” Meaning of Laws Puts LGBT People at Risk*, NEW NOW NEXT (Apr. 30, 2017).

¹³¹ Kan. SB 284, Kan. Leg., Reg. Sess. (Kan. 2018) (enacted); Okla. SB 1140, Okla. Leg., Reg. Sess. (Okla. 2018).

¹³² John Hanna, *Top Kansas Welfare Official Rejects Anti-Gay Criticism*, GAYLY (Dec. 12, 2015), <http://www.gayly.com/top-kansas-welfare-official-rejects-anti-gay-criticism>.

¹³³ Shane Stahl, *Highs and Lows of the 2018 Legislative Session for LGBTQ Non-Discrimination*, FREEDOM FOR ALL AMERICANS (June 2, 2018), <https://www.freedomforallamericans.org/highs-and-lows-of-the-2018-legislative-session-for-lgbtq-nondiscrimination/>.

a history of discrimination against LGBT people that has effects that linger to this day, there is a sufficient record of unconstitutional violations by state government for Congress to abrogate state sovereign immunity in the Equality Act.

The Equality Act takes seriously the Supreme Court's call in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* that "our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth. For that reason the laws and the Constitution can, and in some instances must, protect them in the exercise of their civil rights... without subjecting [them] to indignities when they seek goods and services in an open market."¹³⁴

Thank you for the opportunity to provide written testimony as you consider this important issue. We would like this statement, the attached appendices, and all reports or articles listed or cite in this statement and appendices entered into the record.

Sincerely,

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¹³⁴ 138 S. Ct. 1719, 1727 (2018).

Appendix 1. Williams Institute State-Specific Reports (2010-present)

This appendix contains 78 state-specific reports published by the Williams Institute between 2010 and 2019. These reports focus on 37 different states and include all of the states that currently lack state non-discrimination laws that explicitly prohibit discrimination on the basis of sexual orientation and gender identity. These reports document a widespread and persistent pattern of discrimination, including unconstitutional discrimination by state governments, against LGBT people in employment, housing, public accommodations, education, health care, adoption and foster care services, child welfare systems, parenting, education, the juvenile and criminal justice systems, voting, and state benefits and programs. These reports also document disparities in physical and mental health, well-being, and socio-economic status for LGBT people, and contain research linking such disparities to experiences of discrimination, harassment, and bullying.

Also included are four regional reports, including an analysis that found evidence of greater disparities (e.g., in income, education, and health insurance coverage) for LGBT people who reside in states with less legal protection and more hostile social climates.

Further Williams Institute research on all fifty states, by state, can be found here:

<https://williamsinstitute.law.ucla.edu/#mapwrap>.

State-level estimates of the number of LGBT workers, students, and others who live in states without statutory anti-discrimination protections can be found here:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>

Further, the most recent state-level data about the demographics and socioeconomic disparities of LGBT people can be found here: <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#density>

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1. Mallory, C. & Sears, B. (2017, February). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Alabama*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Alabama-ND-February-2017.pdf>

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Arizona

3. Mallory, C., Sears, B., Brown, T. N. T., & Toomey, R. (2018, March). *The Impact of Stigma and Discrimination against LGBT People in Arizona*. Los Angeles, CA: The Williams Institute.

Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Arizona-Impact-Discrimination-March-2018.pdf>

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California

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Georgia

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Idaho

24. Mallory, C. & Sears, B. (2017, September). *Discrimination Based on Sexual Orientation and Gender Identity in Idaho*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Idaho-ND-September-2017.pdf>
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Indiana

26. Mallory, C. & Sears, B. (2017, August). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Indiana*. Los Angeles, CA: The Williams Institute. Retrieved from: https://williamsinstitute.law.ucla.edu/wp-content/uploads/IN_discrimination_Aug_2017.pdf

Kansas

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Kentucky

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Louisiana

30. Mallory, C. & Sears, B. (2015, November). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Louisiana*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Louisiana-ND-November-2015.pdf>

Maryland

31. Mallory, C. & Liebowitz, S. (2013, September). *Local Laws and Government Policies Prohibiting Discrimination Based on Gender Identity in Maryland*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/MarylandGIOrdinanceReport-Sept-2013.pdf>

Massachusetts

32. Hasenbush, A., Flores, A. R., & Herman, J. L. (2018). Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms. *Sexuality Research and Social Policy*. <https://doi.org/10.1007/s13178-018-0335-z>
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Michigan

34. Gates, G. J. & Brown, T. N. T. (2015, April 21). RE: Children and Families Impacted and the Fiscal Implications of Michigan HB 4188, 4189, 4190 [letter of public comment]. Letter submitted to Representative Adam Zemke, Michigan District 55. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Michigan-adoption-memo-May-2015.pdf>
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Mississippi

36. Mallory, C. & Sears, B. (2015, September). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Mississippi*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Mississippi-ND-September-2015.pdf>
37. Gates, G. J. (2014, December). *Same-sex Couples in Mississippi: A Demographic Summary*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/MI-same-sex-couples-demo-dec-2014.pdf>

Missouri

38. Mallory, C. & Liebowitz, S. (2013, November). *Employment, Housing, and Public Accommodations Discrimination Based on Sexual Orientation and Gender Identity in Missouri*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/MissouriNDRReport-Nov-2013.pdf>

Montana

39. Mallory, C. & Sears, B. (2017, September). *Discrimination Based on Sexual Orientation and Gender Identity in Montana*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Montana-ND-September-2017.pdf>
40. Mallory, C. & Sears, B. (2015, March). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Montana*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/MT-Nondiscrimination-March-2015.pdf>

Nebraska

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Nevada

42. Gates, G. J. (2013, October). *Same-sex Couples in Nevada: A Demographic Summary*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/NV-same-sex-couples-demo-oct-2013.pdf>

New York

43. Herman, J. L. (2013, April). *The Cost of Employment and Housing Discrimination against Transgender Residents of New York*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/research/discrimination/ny-local-gi-laws-jun-2013/>.
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North Carolina

45. Mallory, C. & Sears, B. (2016, May). *Discrimination, Diversity, and Development: The Legal and Economic Implications of North Carolina's HB2*. Los Angeles, CA: The Williams Institute. Retrieved from: https://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development_The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf
46. Mallory, C. & Sears, B. (2016, May). *The Fiscal Impact of North Carolina's HB2*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/The-Fiscal-Impact-of-North-Carolina%E2%80%99s-HB2.pdf>
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North Dakota

49. Mallory, C. & Sears, B. (2015, December). *Employment Discrimination Based on Sexual Orientation and Gender Identity in North Dakota*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/North-Dakota-ND-December-2015.pdf>

Ohio

50. Hasenbush, A. & Mallory, C. (2014, January). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Ohio*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/OhioNDReport-Jan-2014.pdf>

51. Gates, G. J. (2014, April). *Same-sex Couples in Ohio: A Demographic Summary*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/OH-same-sex-couples-demo-apr-2014.pdf>

Oklahoma

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Oregon

54. Ramos, C. (2010, January). *The Effect of Oregon's Potential Budget Cuts on Lesbian, Gay, Bisexual, and Transgender People and Their Children*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Ramos-Oregon-Brief-Potential-Budget-Cuts-Jan-2010.pdf>

Pennsylvania

55. Hasenbush, A. & Mallory, C. (2013, November). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Pennsylvania*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/PennsylvaniaNDReport-Nov-2013.pdf>

South Carolina

56. Hasenbush, A., Davis, G. K., & Mallory, C. (2014, February). *Employment Discrimination Based on Sexual Orientation and Gender Identity in South Carolina*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/South-Carolina-ND-Feb-2014.pdf>

South Dakota

57. Mallory, C., Sears, B., Hansell, D., Meyer, E., Quinio, D. M., & Milner, D. (2015, August). *Employment Discrimination Based on Sexual Orientation and Gender Identity in South Dakota*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/South-Dakota-ND-August-2015.pdf>

58. Goldberg, N. G., Badgett, M. V. L., & Ramos, C. (2010, January). *The Impact of Employment Nondiscrimination Legislation in South Dakota*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Goldberg-Badgett-Ramos-SouthDakota-ENDA-Jan-2010.pdf>

Tennessee

59. Mallory, C. & Sears, B. (2017, February). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Tennessee*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Tennessee-ND-February-2017.pdf>
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Texas

62. Mallory, C., Brown, T. N. T., Russell, S. T., & Sears, B. (2017, April). *The Impact of Stigma and Discrimination against LGBT People in Texas*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Texas-Impact-of-Stigma-and-Discrimination-Report-April-2017.pdf>
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64. Mallory, C. & Sears, B. (2015, May). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Texas*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TX-Nondiscrimination-May-2015.pdf>
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Utah

67. Mallory, C. & Liebowitz, S. (2014, January). *Employment Discrimination Based on Sexual Orientation and Gender Identity in Utah*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/UtahNDRReport-Jan-2014.pdf>
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69. Herman, J. L., Mallory, C., Badgett, M. V. L., & Gates, G. J. (2010, September). *Utah Census Snapshot: New Study on Same-Sex Couples in Utah*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Mallory-Badgett-Gates-UT-CensusSnapshot-Sept-2010.pdf>

Virginia

70. Goldberg, S. & Conron, K. J. (2018, June). *The Impact of Medicaid Expansion in Virginia on Uninsured LGBT Adults*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/1806-VA-Medicaid-Expansion.pdf>
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Washington

74. Hasenbush, A., Mallory, C., & Sears, B. (2016, May). *The Fiscal Impact of Washington State Initiative Measure 1515*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Fiscal-Analysis-Washington-State-Initiative-Measure-1515.pdf>

West Virginia

75. Mallory, C., Liebowitz, S., & Hasenbush, A. (2013, December). *Employment Discrimination Based on Sexual Orientation and Gender Identity in West Virginia*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/WestVirginiaNDReport-Dec-2013.pdf>

Wisconsin

76. Gates, G. J. (2014, August). *Same-sex Couples in Wisconsin: A Demographic Summary*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/WI-same-sex-couples-demo-aug-2014.pdf>

Wyoming

77. Mallory, C. & Sears, B. (2017, September). *Discrimination Based on Sexual Orientation and Gender Identity in Wyoming*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Wyoming-ND-September-2017.pdf>
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Regional Reports

79. Mallory, C. et. al. (2016, March). *LGBT In the South*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-in-the-south/>.
80. Gates, G. J. (2015, March). *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota: Analyses of the 2013 American Community Survey*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-AR-MO-NE-ND-SD-ACS2013-March-2015.pdf>
81. Gates, G. J. (2015, March). *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee: Analyses of the 2013 American Community Survey*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-KY-MI-OH-TN-ACS2013-March-2015.pdf>
82. Hasenbush, A. et al., (2014, December) *The LGBT Divide: A Data Portrait of LGBT People in the Midwestern, Mountain & Southern States*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>

Appendix 2. Williams General Reports 2010 – Present

This appendix contains 95 reports published by the Williams Institute between 2010 and 2019, in addition to the state specific reports in Appendix 1. These reports document a widespread and persistent pattern of discrimination, including unconstitutional discrimination by state governments, against LGBT people in employment, housing, public accommodations, education, health care, adoption and foster care services, child welfare systems, parenting, education, the juvenile and criminal justice systems, voting, and state benefits and programs. These reports also document disparities in physical and mental health, well-being, and socio-economic status for LGBT people, and research linking such disparities to experiences of discrimination, harassment, and bullying. This appendix begins with demographic information about LGBT people in the United States.

LGBT Demographics

1. The Williams Institute. (2019, March). *Adult LGBT Population in the United States*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Population-Estimates-March-2019.pdf>
2. Goldberg, S. K. & Conron, K. J. (2018). *How Many Same-Sex Couples in the U.S. are Raising Children?* Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>
3. Goldberg, S. K. & Conron, K. J. (2018, October). *LGBT American Indians and Alaskan Natives* Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-AIAN-Summary.pdf>
4. Herman, J. L., Flores, A. R., Brown, T. N. T., Wilson, B. D. M., & Conron, K. J. (2017, January). *Age of Individuals Who Identify as Transgender in the United States*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>
5. Flores, A. R., Brown, T. N. T., & Herman, J. L. (2016, October). *Race and Ethnicity of Adults Who Identify as Transgender in the United States*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf>
6. Gates, G. J. (2015, March). *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-Same-Sex-Couples-ACS2013-March-2015.pdf>
7. Kastanis, A. & Gates, G. J. (2013, October). *LGBT Latino/a Individuals and Latino/a Same-Sex Couples*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-2010-Latino-Final.pdf>

8. Kastanis, A. & Gates, G. J. (2013, October). *LGBT African-American Individuals and African-American Same-Sex Couples*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-AFAMER-Oct-2013.pdf>
9. Kastanis, A. & Gates, G. J. (2013, September). *LGBT Asian and Pacific Islander Individuals and Same-Sex Couples*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-2010-API-Final.pdf>
10. Gates, G. J. (2013, February). *LGBT Parenting in the United States*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>

Economic Disparities and Poverty

11. Schneebaum, A. & Badgett, M. V. L. (2019). Poverty in US Lesbian and Gay Couple Households. *Feminist Economics*, 25(1), 1-30. <https://doi.org/10.1080/13545701.2018.1441533>
12. Badgett, M. V. L. (2018). Left Out? Lesbian, Gay, and Bisexual Poverty in the U.S. *Population Research and Policy Review*, 37(5), 667-702. <https://doi.org/10.1007/s11113-018-9457-5>
13. Conron, K. J., Goldberg, S. K., & Halpern, C. T. (2018). Sexual orientation and sex differences in socioeconomic status: a population-based investigation in the National Longitudinal Study of Adolescent to Adult Health. *Journal of Epidemiology and Community Health*, 72(11), 1016. <https://doi.org/10.1136/jech-2017-209860>
14. Brown, T. N. T., Romero, A. P., & Gates, G. J. (2016, July). *Food Insecurity and SNAP Participation in the LGBT Community*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>
15. Badgett, M. V. L., Durso, L. E., & Schneebaum, A. (2013, June). *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>
16. Albelda, R., Badgett, M. V. L., Gates, G. J., & Schneebaum, A. (2009, March). *Poverty in the Lesbian, Gay, and Bisexual Community*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Albelda-Badgett-Schneebaum-Gates-LGB-Poverty-Report-March-2009.pdf>

Employment Discrimination

17. The Williams Institute. (2019, April). *LGBT People in the U.S. Not Protected by State Nondiscrimination Statutes*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-April-2019.pdf>

18. Mallory, C. & Sears, B. (2015, October). Evidence of Employment Discrimination Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Employment-Discrimination-Complaints-2008-2014.pdf>
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Other Vulnerable Populations

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Appendix 3: Examples of Research on Discrimination Against LGBT People 2009 – the Present¹³⁵

1. Sun, H., & Gao, L. (2019). Lending practices to same-sex borrowers. *Proceedings of the National Academy of Sciences*, 201903592. <https://doi.org/10.1073/pnas.1903592116>

Analysis of data from multiple national datasets, including the Home Mortgage Disclosure Act (HMDA) and Boston Fed data, found that

- Those in same-sex couples were about 73.12% more likely to be denied a mortgage application than heterosexual applicants with similar characteristics. (p.3)
- Mortgage approval rates for same-sex couples were between 3% and 8% lower than for different-sex couples.
- Financing/interest rates were 0.02% to 0.2% higher for same-sex couples, “equivalent to about \$8.6 million to \$86 million more interest/fees paid.” (p.4)

2. Mennicke, A., Gromer, J., Oehme, K., & MacConnie, L. (2018). Workplace experiences of gay and lesbian criminal justice officers in the United States: a qualitative investigation of officers attending a LGBT law enforcement conference. *Policing and Society*, 28(6), 712-729. <https://doi.org/10.1080/10439463.2016.1238918>

Analysis of focus groups with 14 lesbian, gay, bisexual, and transgender (LGBT) criminal justice officers conducted in 2012 found that

- Even “in agencies that had inclusive non-discrimination policies at the agency level, there was a sense that claims of discrimination on the basis of sexual orientation would not be taken as seriously as other discrimination claims (such as racism).” (p.14)
- Sex stereotyping was common and resulted in gender differences in discrimination. Whereas lesbian officers were more readily accepted as they were assumed to be masculine (in line with “culture of law enforcement”), “gay officers were stereotyped to be feminine and hypersexual... a violation of the normative standard of law enforcement culture, so out officers reported experiencing more discrimination.” (p.13)
- Safety concerns were real and salient: “officers in the corrections settings felt their safety was jeopardised by their co-workers’ knowledge of their sexual orientation... [They] did not fully trust their co-workers, had doubts that they would have their back in unsafe or crisis situations... and felt that they could not rely on their colleagues to protect them from physical harm if necessary.” (p.14)

¹³⁵ Abbreviations Used

SOGI = Sexual Orientation / Gender Identity

LGBT(Q)= Lesbian, Gay, Bisexual, Transgender, Queer

T/GNC = Transgender (sometimes listed as trans*) / Gender non-conforming

POC= person of color (e.g. any race/ethnicity other than Non-Hispanic, White)

3. Lerner, J. E., & Robles, G. (2017). Perceived Barriers and Facilitators to Health Care Utilization in the United States for Transgender People: A Review of Recent Literature. *Journal of Health Care for the Poor and Underserved*, 28(1), 127-152.
<https://doi.org/10.1353/hpu.2017.0014>

In a review of 38 published, peer-reviewed studies conducted in the United States, transgender barriers to health care access and utilization emerged along roughly four themes:

“1) Provider lack of knowledge concerning transgender identity issues and transgender health issues
2) transgender patients’ previous negative experiences with the health care system or anticipation of these experiences
3) transgender patients’ inability to pay for health care services,
4) health care provider refusal to provide health care services to transgender people.”
(p.127)

4. Levy, D. K., Wissoker, D. A., Aranda, C., Howell, B., Pitingolo, R., Sewell, S. H., & Santos, R. (2017, June 30). *A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals*. Washington, DC: Urban Institute. Retrieved from:
https://www.urban.org/sites/default/files/publication/91486/hds_lgt_final_report_3.pdf

In a paired-test, in-person study conducted in Dallas-Fort Worth, Los Angeles, and Washington, DC, evidence of housing discrimination was found for both same-sex couples and transgender people, though differences occurred by gender.

- Gay male couples consistently experienced discrimination: “Providers told gay men (those who disclosed a male significant other) about one fewer available rental unit for every 4.2 tests than they told heterosexual men. Providers were slightly less likely to schedule an appointment with gay men. When both testers could meet with a provider, agents were less likely to tell gay testers about at least one available unit. Gay and heterosexual men inspected about the same number of units, on average. The average yearly costs agents quoted gay men were \$272 higher than the costs quoted to heterosexual men.” (p.xiii)
- Transgender people experienced mixed results: In field tests in Washington, DC with transgender /gender non-conforming (T/GNC) testers, “housing providers told transgender testers about fewer units than they told cisgender testers, regardless of [whether transgender identity was disclosed. However] agents quoted about the same rent and average net yearly costs to transgender and cisgender testers.” (p.xiv)
 - Disclosure increased risk of housing discrimination: transgender “testers who disclosed their gender status were 11% less likely [than cisgender testers] to be told that there were any available units. No difference was observed between testers who did not disclose and cisgender testers. (p.61)

- Discrimination against lesbian women largely was not statistically significant: “Providers were about equally likely to schedule an appointment with lesbians (those who disclosed a female significant other) and with heterosexual women. When both testers were able to meet with a provider, agents were slightly less likely to tell lesbian testers that a unit was available... Differences across treatment measures of availability and inspections consistently disadvantage lesbian testers, but the differences generally are small and not statistically significant.”
5. NPR, Robert Wood Johnson Foundation, & Harvard T.H. Chan School of Public Health. (2017, November 21). *Discrimination in America: Experiences and Views of LGBTQ Americans* Retrieved from: <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2017/11/NPR-RWJF-HSPH-Discrimination-LGBTQ-Final-Report.pdf>
- In 2017 survey of 3,400 LGBT adults, LGBTQ respondents reported discrimination across multiple sectors, with discrimination often more prevalent among LGBTQ people of color.
 - Employment: “At least one in five LGBTQ people reported being personally discriminated against because of sexual orientation/gender identity (SOGI) when applying for jobs (20%) [or] when being paid equally or considered for promotion (22%).” (p.9)
 - “LGBTQ people of color (32%) are at least twice as likely as white LGBTQ (13%) to say they have been personally discriminated against because they are LGBTQ when applying for jobs.” (p.10)
 - Housing: 22% of LGBTQ people had experienced discrimination when trying to rent or buy a house due to their SOGI identity.
 - Over 22% of transgender respondents “have been told or felt they would be unwelcome in a neighborhood or building because they are transgender” and 27% of transgender respondents “thought about moving to another area because they have experienced discrimination where they live.” (p.2)
 - Law Enforcement: 16% of LGBTQ people had experienced discrimination when interacting with the police, and 15% had avoided calling the police when in need, due to fear of being discriminated against. Both experiences were substantively more common among LGBTQ people of color.
 - LGBTQ people of color (24%) were more than twice as likely as white LGBTQ people (11%) to have experienced discrimination, and were six times more likely than white LGBTQ people (30% vs. 5%, respectively) to say they have avoided calling the police due to concern for anti-LGBTQ discrimination.
 - Medical Care: Approximately one in six LGBTQ people (18%) have avoided “going to a doctor or seeking health care out of concern that they would be discriminated against or treated poorly because of their LGBTQ identity.” (p.12)

6. Singh, S., & Durso, L. E. (2017, May 2). *Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways*. Washington, DC: Center for American Progress. Retrieved from: <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>
- In a survey conducted in 2017 of LGBT adults, over 25% of respondents had experienced discrimination due to SOGI in last year (i.e., in 2016), with large proportions noting that discrimination negatively impacted their psychological (68.5%) or physical well-being (43.7%), as well as their experiences at school (38.5%), and at work (52.8%).
 - Numerous LGBT people made daily decisions about where and how to spend their time, money, and lives in order to avoid encountering discrimination.
 - Overall, almost 24% of LGBT respondents had avoided social situations, in general, to avoid discrimination. LGBT respondents had also made specific decisions about where to live (19.1%), work (13%), shop (18%), and even go to school (8%), with rates substantively higher for those who had experienced prior-year discrimination
 - Transgender respondents were consistently more likely than cisgender (i.e., non-transgender) LGBQ peers to report avoiding places of public accommodation and health care.
 - Over a quarter (25.7%) of transgender respondents had avoided public places—approximately 2.5 times more than cisgender LGBQ (9.9%).
 - Almost 11% of transgender respondents avoided public transportation—twice as many as cisgender LGBQ (4.1%).
 - Transgender respondents were over five times as likely as cisgender LGBQ to have avoided doctors' offices in past year (23.5% vs. 4.4%, respectively), with disabled and POC transgender people at increased risk.
7. Human Rights Watch. (2016, December 7). *"Like Walking Through a Hailstorm" - Discrimination Against Youth in US Schools*. New York, NY: Human Rights Watch. Retrieved from: https://www.hrw.org/sites/default/files/report_pdf/uslgbt1216web_2.pdf
- Interviews with 358 current or former students and 145 teachers, administrators, and staff in five states (AL, PA, SD, TX, UT) from Nov 2015 to May 2016 found numerous forms of overt and subtle discrimination and harassment for both LGBT students and staff, due in part to the "existence of [no promo homo/LGBT specific anti-bullying] laws restricting their speech and a lack of training and guidance about what those laws do and do not prohibit." (p.41)
 - Teachers and staff were hesitant to discuss LGBT issues or include them in curriculum for fear of retribution or violating no promo homo laws and often were less likely to respond to reports of LGBT bullying/harassment.

- Existing laws/policies proved detrimental to formation of gay-straight alliances (GSA). Students reported that teachers refused to be sponsors for GSA due to fear of backlash and/or losing their jobs as a result of “being openly supportive of LGBT youth.”
- Same-sex student couples were more likely to be penalized for public displays of affection and/or reprimanded for behaviors (holding hands, arms around shoulders) that went ignored in straight couples.
- Transgender/GNC students consistently reported issues with access to bathrooms and locker rooms, stating that doing so “made them feel unsafe at school or exposed them to verbal and physical assault.” (p.76)

As a result, transgender/GNC students reported either skipping gym class (hurting academic performance), or avoiding bathrooms altogether (suffering infections and other health problems).

- LGBT students were often deterred or excluded from participation in school events and extracurricular activities:
 - TGNC students reported difficulty joining sports teams consistent with their gender identity.
 - LGBT students reported enhanced policing and restrictions on gender expression/dress throughout the day.
 - Same-sex couples were excluded or barred from attending school dances and spirit events.

8. Galupo, M. P., & Resnick, C. A. (2016). Experiences of LGBT Microaggressions in the Workplace: Implications for Policy. In T. Köllen (Ed.), *Sexual Orientation and Transgender Issues in Organizations: Global Perspectives on LGBT Workforce Diversity* (pp. 271-287). Cham, Switzerland: Springer International Publishing. https://doi.org/10.1007/978-3-319-29623-4_16

Among 100 LGBTQ+ workers, three categories of microaggressions at work were commonly reported, including

- Microassaults: Most like typical heterosexist actions and includes explicit derogatory comments, verbal or nonverbal attacks such as name-calling, avoidant/exclusionary behavior, etc.
- Microinsults: Rude or insensitive comments which demean a person’s sexual orientation/gender identity (SOGI)
- Microinvalidations: Negating or nullifying comments typically about LGBT as a group [‘you don’t look gay’]

Microaggressions negatively impacted workplace climate for LGBT workers. Many chose to conceal SOGI for fear it was unsafe to disclose. Those who did disclose experienced increased microaggressions that negatively affected work relationships, including being isolated or tokenized at work.

9. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality. Retrieved from:

<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

- In the US Transgender Survey (USTS), the largest sample ever of transgender adults (including almost 28,000 transgender adults from all 50 states, Washington, DC, and outlying US territories/overseas US military bases), discrimination was consistently documented across multiple sectors of life.
- Employment: With 15% of respondents reporting being unemployed, transgender unemployment is approximately three times higher than the US population as a whole.
 - One in six (16%) of respondents who had ever been employed had been fired at least once in their lifetime due to their gender identity/expression.
 - In the past year alone, 27% of those who had been employed (and 19% of all respondents), had been fired, denied a promotion, or not hired, due to gender identity/expression.
 - Workplace harassment and mistreatment was common: In the past year, over 15% of respondents had been verbally harassed, physically attacked, and/or sexually assaulted at work, and 23% had experienced other forms of mistreatment, including being forced to use a restroom or dress/present as a gender that did not match their gender identity, in order to keep their job.
- Housing: 23% of transgender adults had experienced some form of housing discrimination and/or instability in the past year as a result of being transgender, including experiencing homelessness (12%), being evicted from home or apartment (5%), being denied a home/apartment (6%), as well as having to move into a cheaper place, a temporary place, or with friends/family.
 - Overall, 30% of transgender adults had ever been homeless in their lifetime. Among those who had been homeless in the past year, 26% did not seek shelter due to fear of being mistreated, and 6% were denied access to a shelter, 74% of whom were denied as a result of gender identity/expression.
 - Among those who stayed in shelter in past year:
 - 52% had been verbally harassed, physically attacked, or sexually assaulted in the shelter.

- 44% left due to “poor treatment or unsafe conditions, even though they had nowhere else to go.”
 - 25% dressed/presented as wrong gender to feel safe; 14% were required by shelter to do so.
 - 9% were thrown out of shelter after staff learned they were transgender.
- Education: Among the 12% of transgender respondents who were out as transgender at some point between Kindergarten and 12th grade, over 77% “had one or more negative experiences at school, such as being verbally harassed, prohibited from dressing according to their gender identity, or physically or sexually assaulted.”
 - 54% of those who were out at school or perceived as transgender had been verbally harassed, and 24% had been physically attacked.
 - 17% of them ultimately left school due to severity of mistreatment; 6% were expelled.
 - Public Accommodations: In the past year, 31% of respondents had at least one negative/discriminatory experience in a place of public accommodation, including being denied equal treatment or service (14%), being verbally harassed (24%), and/or being physically attacked (2%).
 - 34% experienced at least one negative/discriminatory experience when using public transportation in the last year, including 3% who were physically attacked, 32% who were verbally harassed, and 4% who were denied service.
 - Government Programs and Benefits: Transgender adults also reported negative experiences in multiple government offices over the past year: 17% of those who visited public assistance/government benefit offices, 14% of those who visited DMV, 13% of those who visited a court/courthouse, and 11% of those who visited a Social Security office, had a negative or discriminatory experience on account of their gender identity.
10. Kattari, S. K., Whitfield, D. L., Walls, N. E., Langenderfer-Magruder, L., & Ramos, D. (2016). Policing Gender Through Housing and Employment Discrimination: Comparison of Discrimination Experiences of Transgender and Cisgender LGBTQ Individuals. *Journal of the Society for Social Work and Research*, 7(3), 427-447. <https://doi.org/10.1086/686920>
- Among a sample of 3,838 LGBT adults in Colorado (surveyed in 2010), 5.9% had experienced housing discrimination.
 - Transgender respondents (9.2%) were slightly more likely than cisgender LGBTQ (5.7%) to have experienced housing discrimination, though the experience was rare for both groups, and the difference was non-significant.
 - Over a quarter of LGBT adults (26.3%) had experienced employment discrimination, including half of transgender respondents, and 25% of cisgender LGBTQ respondents.

11. Leppel, K. (2016). The labor force status of transgender men and women. *International Journal of Transgenderism*, 17(3-4), 155-164.
<https://doi.org/10.1080/15532739.2016.1236312>
- Among transgender respondents to National Transgender Discrimination Survey (NTDS), 12% of transgender men and 14% of transgender women were unemployed, compared with the general US unemployment rate between 6% and 8.9%.
12. Mishel, E. (2016). Discrimination against Queer Women in the U.S. Workforce: A Résumé Audit Study. *Socius*, 2, 2378023115621316. <https://doi.org/10.1177/2378023115621316>
- In audit study of 1,634 fictitious resumes of female candidates sent to 817 positions in three states (NY, VA, TN) and Washington, DC, straight women were about 29% more likely to be contacted for an interview than queer women (17% vs. 12%, respectively).
13. Seelman, K. L. (2016). Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality. *Journal of Homosexuality*, 63(10), 1378-1399.
<https://doi.org/10.1080/00918369.2016.1157998>
- Among NTDS respondents who had attended college and were openly transgender while in school, 25% had been denied access to school bathrooms or facilities, and almost 21% had been denied access to gender-appropriate campus housing.
 - Those denied access to bathrooms and/or housing were significantly more likely to have attempted suicide, than those who had not.
 - 61% of transgender people who had been denied access to college bathrooms (vs. 43% who had not) had ever attempted suicide.
 - 61% of transgender people who had been denied access to campus housing (vs. 42% of those who had not) had ever attempted suicide.
14. Green, M. S. (2015, July). *Anchorage LGBT Discrimination Survey: Final Report*. Anchorage, AK: Identity, Inc. Retrieved from: http://alaskacommunity.org/wp-content/uploads/2015/07/akq_final_report.2012.rev_.pdf
- Among 268 LGBT residents of Anchorage, AK surveyed in 2010, multiple forms of discrimination were documented. Key facts for each domain are summarized below with additional factors analyzed in report.
- Employment: 21% had been denied a job due to SOGI, 17.5% had been denied a promotion, and 14.6% had been fired at least once.
 - 44% had been harassed at work by an employer or coworker; 16% had left job due to harassment.

- Housing: 10.1% had been denied a lease, and 8.2% had been evicted or forced to move due to SOGI. 1.5% had been denied access to a homeless shelter. 18.7% had been harassed by landlord or tenant.
- Education (as student): 10% had been denied participation in extracurricular activities, 1.9% had been denied admission, 1.1% had been denied financial aid, and 0.7% had been denied campus housing due to SOGI.
 - 41% had been bullied or harassed by other students while in school in Anchorage, and 14.2% had been harassed by their teachers. Approximately 16% had to leave school due to harassment.
- Government Benefits and Programs: 4.1% were denied services from a local government agency, 1.9% were denied gender-appropriate driver's license, and 0.4% were denied a ride or removed from city bus.
- Public Accommodations: 3.7% were denied a loan/line of credit, 6% were denied use of public restroom, 3.7% were denied use of a changing room in a gym/fitness club.
- Health Care: 4.9% were denied non-emergency medical care, 4.1% were denied transition related care, 0.7% were denied emergency medical care, and 13.4% had experienced verbal abuse or harassment from a medical provider.

15. Lambda Legal. (2015). *Protected and Served?* New York, NY: Lambda Legal. Retrieved from: <https://www.lambdalegal.org/protected-and-served>

Report details results from a 2012 national survey of 2,376 LGBT+ people, exploring "interactions of LGBT people and people with HIV with police, courts, prisons and school security and school discipline." 5% of the sample had been incarcerated in the past five years. Experiences of violence, harassment, and sexual assault while incarcerated were common, particularly for T/GNC respondents and T/GNC respondents of color.

Among those who had been incarcerated

- 7% experienced sexual assault.
- 12% overall experienced physical assault; 22% T/GNC respondents and 28% of T/GNC people of color (POC) experienced physical assault.
- 27% overall experienced sexual harassment; 34% T/GNC respondents and 37% of T/GNC POC experienced sexual harassment.
- 57% experienced verbal assault or harassment (shouted at, taunted, called names) by prison or jail staff specifically; 66% T/GNC respondents were verbally harassed by prison or jail staff.
- Nearly one-third (30%) of those who experienced harassment from staff reported their experience, yet only 2% felt their complaints were fully addressed.

- “Transgender prisoners face unique dangers, in no small part because most jails and prisons incarcerate people according to the sex assigned at birth as opposed to their gender identity. Transgender prisoners may also be subjected to abusive physical searches to examine their genitalia and may be left unclothed to be demeaned and put on display for guards and other staff.”
 - T/GNC respondents accounted for one-third of all survey respondents who had been incarcerated. The majority (60%) of these respondents were placed in a single-gender section of that jail or prison that did not match their gender identity.

16. The National Association of Gay & Lesbian Real Estate Professionals. (2015). *2015 LGBT Home Buyer and Seller Survey*. Jupiter, FL: The National Association of Gay and Lesbian Real Estate Professionals. Retrieved from: <https://naglerep.com/wp-content/uploads/2017/06/naglerep-lgbt-survey-2015.pdf>

In a 2015 survey of approximately 1,800 LGBT adults living across the United States, the strong impact of lack of housing antidiscrimination protections on homeownership experiences/housing preferences emerged.

- Over 75% of those surveyed reported it was “very important” to live in a state with an anti-LGBT discrimination ordinance, second only in importance to living in a low-crime neighborhood (80% reported this as ‘very important’). In addition, 69% felt it was “very important” to live in a city with a non-discrimination ordinance.
- 93% of respondents had strong or moderate concerns about experiencing housing discrimination in at least one area:
 - Over two-thirds of LGBT adults surveyed had strong (46%) or moderate (21%) concerns about being discriminated against by a real estate agent.
 - Almost three-quarters of them had strong (42%) or moderate (31%) concerns about being discriminated against when renting apartment from a private landlord.
 - Over 60% of them had strong (42%) or moderate (20%) concerns about ability to be approved for a home mortgage as a result of their SOGI.

17. Wright, T. E., & Smith, N. J. (2015). A Safer Place? LGBT Educators, School Climate, and Implications for Administrators. *The Educational Forum*, 79(4), 394-407. <https://doi.org/10.1080/00131725.2015.1068901>

LGBT teachers’ perceived school climate was compared between 2011 and 2007, using data from National Survey of Educators’ Perceptions of School Climate. High rates of homophobia, harassment, and potential discrimination were found in both years.

- Virtually all LGBT teachers had heard homophobic remarks from students in both years (97% in 2007 and 99.4% in 2011). Homophobic comments from teachers, however,

declined in 2011, along with an increase in the number of schools implementing policies to address use of homophobic language.

- In both years, “one third of respondents felt as though their jobs were at risk if they were out” to administrators, whereas more than half (53% in 2007, 61% in 2011) “feared job loss if out to students.”
- In 2007, approximately a quarter (27%) “experienced harassment at school” which declined to 21% in 2011.
- 78% of LGBT teachers in 2011 felt the attitude of their community was unsafe—an increase from the 41% who thought so in 2007.

18. Equal Rights Center. (2014). *Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples*. Washington, DC: Equal Rights Center. Retrieved from: https://equalrightscenter.org/wp-content/uploads/senior_housing_report.pdf

- In a 10-state field test, where testers posed as someone in same-sex or other-sex relationship seeking housing availability in a senior housing community, “in 96 of the 200 tests (48%) conducted, the LGB tester experienced at least one type of adverse, differential treatment. In 25 tests (12.5%), the LGB tester experienced multiple forms of adverse, differential treatment.” (p.14)

Adverse treatment included providing LGB persons fewer options for housing, quoting higher fees, rental price, and/or a more extensive application, providing less information on financial incentives, and only providing information about 2-bedroom rentals.

19. Hanssens, C., Moodie-Mills, A. C., Ritchie, A. J., Spade, D., & Vaid, U. (2014, May). *Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*. New York, NY: Center for Gender & Sexuality Law at Columbia Law School. Retrieved from: https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf

This report by the Center for Gender & Sexuality Law at Columbia Law School, presents federal policy recommendations for addressing criminalization of LGBT people and people living with HIV (PLWH)...organized around key topic areas:

- Policing and Law Enforcement: “LGBT youth and adults often experience gender and sexuality specific forms of [profiling]... Across the country, non-heterosexual youth are more likely to be stopped by the police and to experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior.” (p.12)
 - “Experiences of police harassment and abuse often extend to circumstances under which LGBT youth and adults are seeking protection from violence. Nearly half of LGBT survivors of violence who sought help from police report misconduct. Over the past decade, law enforcement agents have consistently been among the top three

categories of perpetrators of homophobic or transphobic violence against LGBT people reported to anti-violence organizations.” (p.12)

- “LGBT youth are estimated to make up 40% of the homeless youth population in the United States... As a result, LGBT people are disproportionately impacted by targeted policing, harassment, and abuse of homeless people by law enforcement, as well as by discriminatory enforcement of laws that criminalize everyday activities in public spaces and public housing projects.” (p.15)
- Prisons: “LGBT people are overrepresented in U.S. prisons and jails, and face widespread and pervasive violence, inadequate health care, nutritional deprivation, and exclusion from much-needed services and programs.”
 - LGBT prisoners and prisoners with HIV are more likely to be placed in administrative segregation or solitary confinement, to face harassment and sexual assault, and to be denied access to mail, jobs, and programs while in custody.
 - LGBT prisoners have also experienced unanticipated negative impacts from the Prison Rape Elimination Act (PREA), including being punished through new policies purportedly created to comply with PREA that forbid gender non-conforming behavior and punish consensual physical contact.
 - Transgender women are routinely placed in men’s prisons and jails in virtually every jurisdiction, where they face harassment and violence, often for extended periods in isolation ostensibly for their own protection. A 2009 survey found that transgender prisoners experience sexual victimization at a rate 13 times higher than non-transgender prisoners” (p.22)
- Criminalization of youth: “Approximately 300,000 gay and transgender youth are arrested and/or detained each year, of which more than 60% are Black or Latino/a... While LGB and gender nonconforming youth comprise just 5 to 7% of the overall youth population, they represent 13 to 15% of youth who come in contact with the system.” (p.37)
 - Research shows that LGBT youth entering the juvenile justice system are most likely to have experienced family rejection, abuse, poverty, failed safety net programs, and homelessness. Family rejection and interfamily conflict stemming from parental refusal to accept a child’s sexual orientation or gender identity often force LGBT youth onto the streets. One study found that 39% of LGBT youth were forced to leave their homes because of their sexual orientation or gender identity.” (p.38)
 - “Once in foster care, LGBT youth often flee group homes and foster families because of homophobic and transphobic harassment and abuse... Compared with their heterosexual peers, LGBT youth in juvenile detention are: Twice as likely to have been removed from their homes because someone was hurting them; Almost twice as likely to have lived in a foster or group home. More than twice as likely to have been detained in juvenile facilities for running away from their home or placement.” (p.38)

- “LGBT youth who end up in the juvenile justice system also face harsher sentences overall, and are at greater risk of being prosecuted for consensual sexual activity than their non-LGBT peers, regardless as to whether they have committed a sex-related crime.” (p.43)
20. Fidas, D., Cooper, L., & Raspanti, J. (2014, May). *The Cost of the Closet and the Rewards of Inclusion: Why the Workplace Environment for LGBT People Matters to Employers*. Washington, DC: Human Rights Campaign Foundation. Retrieved from: https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf
- In a 2013 survey of LGBT people in the workplace, over 53% of respondents reported they had “hid who they are in the workplace,” with 23% doing so out of fear that they “may not be considered for advancement or development opportunities.”
21. Marksamer, J., & Tobin, H. J. (2014, April 10). *Standing with LGBT Prisoners: An Advocate’s Guide to Ending Abuse and Combating Imprisonment*. Washington, DC: National Center for Transgender Equality. Retrieved from: https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf
- “LGBT people are more likely to end up behind bars, and more likely to face abuse behind bars. Being LGBT in a US jail or prison often means daily humiliation, physical and sexual abuse, and fearing it will get worse if you complain. Many LGBT people are placed in solitary confinement for months or years just because of who they are.” (p.2)
 - “In these settings, LGBT people are especially vulnerable to abuse and mistreatment, by both staff and other prisoners... [In one] federal survey, prisoners who identified as “non-heterosexual” were 3 times as likely to report sexual abuse. A study of California prisons found that transgender women in men’s prisons were 13 times as likely to be sexually abused as other prisoners.” (p.3)
 - “LGBT prisoners also face many other forms of mistreatment behind bars. Many face constant humiliation and degradation from staff and prisoners alike. Staff may blame them for their own victimization, believing they are “flaunting themselves,” and refusing to take grievances or reports of abuse seriously.
 - If their vulnerability is recognized at all, it may be by placing them in indefinite solitary confinement, with little or no activity or human contact—conditions that can cause serious psychological harm, and which medical experts have found to amount to torture.
 - In other cases, LGBT prisoners’ requests for temporary protective custody are ignored.” (p.3)
 - “Transgender and gender nonconforming people can face additional forms of mistreatment. Though practices are changing, many facilities still house transgender

people with men or women strictly according to their genital anatomy—often increasing their vulnerability to abuse.

- Facilities may deny them access to gender-appropriate clothing or grooming items, and punish them for attempting to express their gender identity.
- In addition, some facilities still place decisions about the medical needs of transgender people in the hands of administrators rather than health care providers, adopting blanket policies against providing hormone therapy or other transition-related care.” (p.3)

22. McBride, S., Durso, L. E., Hussey, H., Gruberg, S., & Robinson, B. G. (2014, December 10). *We the People: Why Congress and U.S. States Must Pass Comprehensive LGBT Nondiscrimination Protections*. Washington, DC: Center for American Progress. Retrieved from: <https://cdn.americanprogress.org/wp-content/uploads/2014/12/LGBT-WeThePeople-report-12.10.14.pdf>

- In this comprehensive report from the Center for American Progress, numerous published/documented instances of LGBT discrimination in workplace, public accommodations, housing, credit, and education are described, demonstrating the persistence and pervasiveness of discrimination faced by LGBT Americans.
- The extensive scope of evidence led the authors to conclude “LGBT Americans need immediate action to provide them with explicit and uniform protections from discrimination in...five core areas of life, all of which are central to the American Dream: access to employment, housing, public accommodations, credit, and education... No definition of “We the people” is truly inclusive and complete until all Americans can participate in every one of these vital areas. ” (p.4-6)

23. Miller, S. L., & Lilley, T. G. (2014). Proving Themselves: The Status of LGBQ Police Officers. *Sociology Compass*, 8(4), 373-383. <https://doi.org/10.1111/soc4.12149>

- In a review article summarizing the peer-reviewed literature on sexual minority (e.g., LGBQ) police officers, the authors report that “Our review of the evidence indicates that LGBQ officers are forced to prove themselves more than their straight counterparts and that progress has been incomplete, unevenly distributed, tenuous, and often met with a backlash and counter-resistance.” (p.373)
- Across studies, LGBQ officers report being isolated and excluded at work and regarded as an outsider, potentially leading to explicit threat to their safety. Negative experiences included “constant scrutiny by other officers and having either heard or been the target of anti-gay or lesbian jokes, derogatory slang, or homophobic graffiti or cartoons on the job... [and being] excluded from informal social activities, or otherwise made to feel like an outsider in their departments.” (p.377)
- As a result, “half the officers were concerned about being physically or verbally abused, as well as fear that backup would be slow: [said one officer] ‘You could get killed because [of] lack of backup if the other officers knew of your sexual orientation.’” (p.378)

- Many LGBTQ officers reported concern about job discrimination, including “being passed over for promotional opportunities... Half of the officers in one study believed that being openly gay or lesbian within the department could have a direct, negative effect on promotions, while one-third believed that promotional opportunities would be enhanced for lesbian and gay officers [only] in certain contexts.” (p.378)
24. Reisner, S. L., White, J. M., Dunham, E. E., Heflin, K., Begenyi, J., Cahill, S., & The Project Voice Team. (2014). *Discrimination and Health in Massachusetts: A Statewide Survey of Transgender and Gender Nonconforming Adults*. Boston, MA: The Fenway Institute. Retrieved from: <http://fenwayfocus.org/wp-content/uploads/2014/07/The-Fenway-Institute-MTPC-Project-VOICE-Report-July-2014.pdf>
- In a survey of 452 T/GNC adults in Massachusetts, surveyed in 2013, the majority of T/GNC respondents (65%) “had experienced discrimination in at least one public accommodations setting in the past 12 months, a period when the new gender identity nondiscrimination law—which does not ban discrimination in public accommodations—was in effect... The five most prevalent discrimination settings were transportation (36%), retail (28%), restaurant (26%), public gathering (25%), and health care facility/service (24%).” (p.1)
 - Discrimination was a significant predictor of numerous adverse health outcomes: Over 31% of those who had experienced discrimination reported depressive symptoms, twice that of those who had not been discriminated against (19%).
 - In addition, those who experienced discrimination were significantly more likely to postpone or forgo seeking medical care, including routine/preventative care (30%) and acute care when sick/injured (25%)—with 14% ultimately experiencing a medical emergency as a result, winding up in the ER or Urgent Care.
25. Barron, L. G., & Hebl, M. (2013). The force of law: The effects of sexual orientation antidiscrimination legislation on interpersonal discrimination in employment. *Psychology, Public Policy, and Law*, 19(2), 191-205. <https://doi.org/10.1037/a0028350>
- In field experiment in Texas, retail managers were more negative towards 'applicants' wearing visible sign of LGBT identity in areas without employment protections (Arlington/Plano) compared to those with such protections (Dallas/Fort Worth).
26. Bradford, J., Reisner, S. L., Honnold, J. A., & Xavier, J. (2012). Experiences of Transgender-Related Discrimination and Implications for Health: Results from the Virginia Transgender Health Initiative Study. *American Journal of Public Health*, 103(10), 1820-1829. <https://doi.org/10.2105/AJPH.2012.300796>
- Of 350 transgender adults surveyed in Virginia, approximately 41% (n = 143) “reported experiences of transgender-related discrimination in one or more areas: health care, 27% (n = 94); employment, 22% (n = 78); and housing, 9% (n = 32);” categories not mutually exclusive. Approximately 2.6% of sample had experienced all three forms.

- Discrimination was more common among POC, and those with lower socioeconomic status (e.g. lower education and/or lower income).
27. Friedman, S., Reynolds, A., Scovill, S., Brassier, F. R., Campbell, R., & Ballou, M. (2013, June). *An Estimate of Housing Discrimination Against Same-Sex Couples*. Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Retrieved from: https://www.huduser.gov/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf
- In a 50-state field test targeting online metropolitan retail market in 2011, same-sex couples experienced housing discrimination nationwide, as measured by fewer responses to email inquiries about housing than heterosexual couples.
28. Pew Research Center. (2013, June 13). *A Survey of LGBT Americans: Attitudes, Experiences, and Values in Changing Times*. Washington, DC: Pew Research Center. Retrieved from: <https://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>
- In a survey of approximately 1,200 LGBT adults conducted by Pew Research Center in April 2013, discrimination remained a common experience. As a result of their SOGI: 30% had ever been threatened or physically attacked (4% in the past year); 23% had received poor or worse service at a restaurant, hotel, or place of business (5% in past year); 21% had been “treated unfairly” by an employer (5% in past year).
 - When asked which policy issues should be a top priority, the most endorsed answer was equal employment rights for LGBT, endorsed by 57% of the sample. An additional 45% felt that adoption rights for same-sex couples should be a top policy priority.
29. Grant, J. M., Mottet, L. A., Tanis, J., Harrison, J., Herman, J. L., & Keisling, M. (2011). *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force. Retrieved from: https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf
- In the National Transgender Discrimination Survey (NTDS), a sample of 6,450 transgender and gender-nonconforming (T/GNC) adults surveyed in 2010 from all 50 states, Washington, DC, and outlying US territories/overseas U.S. military bases, discrimination among transgender/GNC respondents was well documented.
 - Employment: 14% of T/GNC respondents were unemployed, double the unemployment rate of the US adult population for 2010 (7%).
 - Across the sample, 44% had been denied a job due to T/GNC identity, 26% had lost a job, and 23% had been denied a promotion, with 47% reporting one or more of these adverse job outcomes.
 - In addition, among those employed, 81% had experienced at least one instance of mistreatment at work, including being harassed (52%), being repeatedly referred to

by the wrong pronoun (51%), being denied access to appropriate bathrooms (25%), and being physically (7%) or sexually (6%) assaulted.

- 32% were forced to present as the wrong gender in order to keep their job.
- Education: Among T/GNC respondents who were open about their gender identity/expression at school in grades Kindergarten to 12th grade: 78% experienced verbal harassment, 35% were physically assaulted, and 11% were sexually assaulted by other students. In addition, 31% were verbally harassed, 5% were physically assaulted, and 3% were sexually assaulted by their teachers.
 - Across all forms of education, including college and graduate school, 15% of the sample reported leaving school at some point due to harassment.
- Housing: 19% of respondents had been denied a home/apartment and 11% had ever been evicted, as a result of their T/GNC identity.

30. Lewis, G. B., & Pitts, D. W. (2009). Representation of Lesbians and Gay Men in Federal, State, and Local Bureaucracies. *Journal of Public Administration Research and Theory*, 21(1), 159-180. <https://doi.org/10.1093/jopart/mup030>

- Using 2000 Census Data gay men (men partnered with men) were less likely than straight men to work for the government (fed, state, or local; 14.3% vs. 16.6% worked for a government branch) and lesbian women were more likely than straight women to do so (21.2% vs. 18.4%). Gay men and lesbian women accounted for 0.27% and 0.38%, respectively, of the total government workforce.

Though gay men are, overall, less likely than heterosexual men to work for the government, living in areas with employment protections removes this gap.

- “Compared to a comparably educated and experienced heterosexually partnered man, a partnered gay man’s odds of working for the federal government are only two-thirds as high and his odds of working for a state and local government (SLG), are three-fourths as high.”(p.175) However, in states with “a gay rights law or an executive order prohibiting discrimination in public employment”, partnered gay men are equally as likely as partnered heterosexual men to work for SLG.
- Results are less clear for lesbian women. Overall, lesbian women are as equal, or slightly more likely, than partnered heterosexual women to work for government, regardless of the presence of protection laws. However, “partnered lesbians are also more likely to hold SLG jobs in states with than without protections.” (p.175)

31. Tilcsik, A. (2011). Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States. *American Journal of Sociology*, 117(2), 586-626. <https://doi.org/10.1086/661653>

- In a resume audit study of college seniors in 2005 (sexual orientation indicated by multi-year stint as treasurer in LGBTQ vs control position in left-wing political organization),

analyses of the 3,538 resumes sent to 1,769 jobs in seven states, found significant evidence of hiring discrimination, which was partially ameliorated by presence of anti-discrimination laws.

- Gay applicants were 40% less likely than heterosexual applicants to be invited for an interview (7.2% vs 11.5%, respectively), or “heterosexual job seeker had to apply to fewer than nine different jobs to receive a positive response, while a gay applicant needed to reply to almost 14 ads to achieve the same result.” (p.605-606)
- ‘Callback gap’ differed based on legal environment, with gap cut in half for employers subject to antidiscrimination laws at either city-, county- or state-level (though gap still existed).

32. Grant, J. M., Mottet, L. A., Tanis, J., Harrison, J., Herman, J. L., & Keisling, M. (2010, October). *National Transgender Discrimination Survey Report on Health and Health Care*. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force. Retrieved from: https://cancer-network.org/wp-content/uploads/2017/02/National_Transgender_Discrimination_Survey_Report_on_health_and_health_care.pdf

- In the 2010 NTDS (see reference XX), 19% of the sample, T/GNC adults, had been refused care due to TGNC status, with even higher numbers among people of color in the survey.
 - 28% of respondents were subjected to harassment in medical settings and 2% were victims of violence in doctor’s offices.
- In addition, 28% postponed or avoided medical treatment when they were sick or injured and 33% delayed or did not try to get preventive health care.

33. Rankin, S., Weber, G., Blumenfeld, W., & Frazer, S. (2010). *2010 State of Higher Education for Lesbian, Gay, Bisexual & Transgender People*. Charlotte, NC: Campus Pride. Retrieved from: <https://www.campuspride.org/wp-content/uploads/campuspride2010lgbtreportsummary.pdf>

- In a national survey of over 5,000 students, staff, faculty, and administrators in higher education, 23% of LGB, 39% of transmasculine, 38% of transfeminine, and 31% of GNC respondents had experienced some form of harassment at school (vs. 12% hetero, 20% cismen, and 19% cis women).
- Both LGBQ and trans/GNC respondents (students and staff/faculty) were significantly more likely than cis/het peers to have “seriously considered leaving their institution...feared for their physical safety due to sexual identity, and avoided disclosure of sexual identity due to intimidation and fear of negative consequences.” (p.14)

34. Wright, T. E. (2010). LGBT Educators' Perceptions of School Climate. *Phi Delta Kappan*, 91(8), 49-53. <https://doi.org/10.1177/003172171009100810>

- Among LGBT educators surveyed in 2007, approximately 75% had experienced some form of homophobia.
- However, "LGBT educators' sense of personal safety differs depending on where they live" (p.50). Respondents living in states that recognized same-sex marriage/domestic partnerships reporting higher sense of personal safety (than those living in states without marriage recognition).

35. Colvin, R. (2008). Shared Perceptions Among Lesbian and Gay Police Officers: Barriers and Opportunities in the Law Enforcement Work Environment. *Police Quarterly*, 12(1), 86-101. <https://doi.org/10.1177/1098611108327308>

- In 2007 survey of 66 police officers attending conference for Gay & Lesbian Criminal Justice Professionals, "discrimination in promotion was the most common barrier to equal employment opportunity (22%), followed by assignments (17%) and evaluations (16%)." An additional 8% had experienced hiring discrimination, 2% experienced firing discrimination, 6% had difficulty finding a mentor, and 11% had difficulty finding a partner.
- In addition, 67% reported hearing homophobic comments, 34% had experienced repeated harassment, and 51% reported feeling like an outsider (48% reported social isolation).

Appendix 4: Examples of Law Review Articles on Discrimination Against LGBT People, 2009 to the Present

1. Michelle Moretz, Baldwin, Hively, and Christiansen, *Oh My! Navigating the Yellow Brick Road of Employment Discrimination for LGBT Plaintiffs*, 48 STETSON L. REV. 235 (2019), <https://www.stetson.edu/law/lawreview/media/Moretz2019.pdf> (arguing that courts recognize sexual orientation discrimination as sex discrimination under Title VII through deference to the EEOC, associational theory, and failure to conform to gender norms).
2. Anthony Saccocio, *Civil Rights – Discrimination by Reason of Sexual Orientation or Identity: The Sixth Circuit Determines that Transgender and Transitioning Status are Protected Classes under Title VII*, 94 N.D. L. REV. 239 (2019), <https://law.und.edu/files/docs/ndlr/pdf/issues/94/1/94ndlr239.pdf> (arguing that North Dakota courts should protect transgender employees under Title VII).
3. Coco Arima, *Protecting the People: Expanding Title VII's Protection Against Sex Discrimination to Sexual Orientation Discrimination*, 68 DEPAUL L. REV. 69 (2018), <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4073&context=law-review> (arguing federal courts should interpret Title VII coverage broadly to include claims of sexual orientation discrimination as a basis for a cause of action and that Congress should amend Title VII to define sex discrimination as including sexual orientation discrimination).
4. Jamie Langowski, William L. Berman, Regina Holloway, Cameron McGinn, *Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market*, 29 YALE J.L. & FEMINISM 321 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2941810 (finding that surveys of transgender people reveal high levels of discrimination in housing; presenting new evidence of discrimination from a series of matched pairs housing discrimination tests and finding that transgender and gender non-conforming people received discriminatory differential treatment 61% of the time; were 27% less likely to be shown additional areas of the apartment complex; 21% less likely to be offered a financial incentive to rent; 12% more likely to be told negative comments about the apartment and the neighborhood; and 9% more likely to be quoted a higher rental price than people who were not transgender and conformed to typical gender standards; reporting that in 2016, more than 200 anti-LGBT bills were introduced and that hate crimes against transgender people increased 239% between 2013 and 2015; and recommending gender identity be added as a protected class in anti-discrimination laws, including the Fair Housing Act).
5. Adam Mengler, *Public Dollars, Private Discrimination: Protecting LGBT Students from School Voucher Discrimination*, 87 FORDHAM L. REV. 1251 (2018), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5573&context=flr> (arguing that through school voucher programs more than a dozen states allow parents to apply state tax dollars to private school tuition at schools that discriminate against LGBT students and against students with LGBT parents; and that such discrimination violates the Equal Protection Clause).

6. Shannon Bond, *Married on Saturday and Fired on Monday: Hively v. Ivy Tech Community College: Resolving the Disconnect Under Title VII*, 97 NEB. L. REV. 225 (2018), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=3212&context=nlr> (arguing that employment discrimination based on sexual orientation is protected under Title VII's prohibition of discrimination based on sex, based, in part, on the broad goals of Title VII and existing precedent allowing claims based on of gender nonconformity, as well as associational claims).
7. Kenneth A. Pilgrim, *Two Wrongs Don't Make it Right: Title VII, Sexual Orientation, and the Misuse of Stare Decisis*, 52 GEORGIA L. REV. 685 (2018), <https://www.georgialawreview.org/article/7658-two-wrongs-don-t-make-it-right-title-vii-sexual-orientation-and-the-misuse-of-stare-decisis> (arguing that intervening decisions of the Supreme Court have removed the legal basis for earlier federal appellate court opinions declining to protect LGBT people under Title VII's prohibition of sex discrimination, and that federal courts of appeals should not invoke stare decisis to avoid this issue, and instead should evaluate the merits of this issue anew, taking into account intervening developments in the law).
8. Shalyn L. Caulley, *The Next Frontier to LGBT Equality: Securing Workplace-Discrimination Protections*, 2017 U. ILL. L. REV. 909, 913-17 (2017), <https://illinoislawreview.org/print/vol-2017-no-2/the-next-frontier-to-lgbt-equality/> (summarizing research documenting employment discrimination against LGBT people).
9. Michael T. Zugelder, *Toward Equal Rights for LGBT Employees: Legal and Managerial Implications for Employers*, 43 OHIO N.U. L. REV. 193 (2017), https://law.onu.edu/sites/default/files/193_-_zugelder.pdf ("This article has reviewed the complex issue of workplace discrimination based on sexual orientation and identity. Although the law may change soon, the current lack of nationwide federal legislation and case law mandating equal employment of LGBT workers and the trending (but still inconsistent) state and local laws all stand in contrast to the more progressive national approaches taken by the EU and other nations.").
10. Sonja Marrett, *Beyond Rehabilitation: Constitutional Violations Associated with the Isolation and Discrimination of Transgender Youth in the Juvenile Justice System*, 58 B.C.L. REV. 351 (2017), <https://lawdigitalcommons.bc.edu/bclr/vol58/iss1/10> ("The juvenile justice system is predicated on a theory of rehabilitation with concern for protecting juveniles and society. For LGBT youth, however, the system has developed into a punitive arrangement. LGBT youth face higher rates of criminalization and incarceration for non-violent crimes than any other group of youth. They also face unique threats, including sexual, physical, and emotional harassment; isolation; and a lack of medical care. Transgender youth are especially impacted. In response, victims have increasingly brought constitutional claims against federal prison officials for unconstitutional conditions of confinement. The courts are inconsistent on whether the judiciary should utilize the protections of the Fourteenth Amendment's due process clause or the Eighth Amendment's proscription against cruel and unusual punishment to evaluate juvenile conditions of confinement cases.").

11. Matthew W. Green Jr., *Same-sex Sex and Immutable Traits: Why Obergefell v. Hodges Clears a Path to Protecting Gay and Lesbian Employees from Workplace Discrimination Under Title VII*, 20 J. GENDER RACE & JUST. 1 (2017), https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1899&context=fac_articles (arguing that the Supreme Court's decision in *Obergefell* strengthens the argument that sexual orientation discrimination violates Title VII).

12. Kayla L. Acklin, "Hurdling" Gender Identity Discrimination: The Implications of State Participation Policies on Transgender Youth Athletes' Ability to Thrive, 37 B.C.J.L. & SOC. JUST. 107 (2017), <http://lawdigitalcommons.bc.edu/jlsj/vol37/iss1/4> ("The number of students, in grades kindergarten through high school, who identify as transgender has steadily increased during the last decade. These students seek the same opportunities as their cisgender peers but are often denied participation in athletic activities because of their non-conforming gender-behavior. Currently, there is no federal law governing transgender participation in sports, which has resulted in an inconsistency among state athletic associations' participation policies; the vast majority of states restricts participation. These states are limiting transgender students' ability to receive the benefits that sports provide. To solve this inconsistency and provide equal opportunity for transgender students, this Note argues that the Civil Rights Act of 1964 be amended to prohibit gender-based discrimination. As a supplementary solution, the U.S. Department of Education should recommend Congress pass a bill conditioning federal funding of state after-school sports programs on the inclusion of all students, including transgender students.).

13. Meghan M. Piric, *Undressing the Locker Room Issue: Applying Title IX to the Legal Battle Over Locker Room Equality for Transgender Student-Athletes*, 27 MARQUETTE SPORTS L. REV. 449 (2017), <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=https://www.searchencrypt.com/&httpsredir=1&article=1711&context=sportslaw> (Congress should either provide explicit protections for transgender athletes or the Supreme Court should interpret Title IX's prohibition of sex discrimination to include discrimination against transgender students: "That decision should not be taken lightly, as it has the ability to seriously affect the well-being of the entire transgender community, especially transgender student-athletes who suffer from a sense of isolation from their teams. On one hand, allowing student-athletes to use the locker room they prefer to use based on their gender identity will help them feel like they are truly part of a team and living life as their true selves. On the other hand, continuing to ban student-athletes from using those same locker rooms could not only affect the students' overall sense of well-being but also their sense of belonging.").

14. Tessa M. Register, *The Case for Deferring to the EEOC's Interpretations in Macy and Foxx to Classify LGBT Discrimination as Sex Discrimination Under Title VII*, 102 IOWA L. REV. 1397 (2017), <https://ilr.law.uiowa.edu/assets/Uploads/ILR-102-3-Register.pdf> ("LGBT employees across the country are currently suffering from severe and pervasive workplace discrimination. Although some states have attempted to take action to remedy these biases, many private employers lack statutory incentives to prevent harassment or adverse employment actions motivated by gender identity or sexual orientation prejudices. Further, as more same-sex couples marry following the Supreme Court's decision that it is

unconstitutional to withhold the right to marry on the basis of sexual orientation, more employees than ever will be constructively notifying their employers of their sexual orientation. The EEOC's interpretations of "sex" under Title VII in *Macy* and *Foxx* held that Title VII sex discrimination encompasses workplace discrimination on the bases of gender identity and sexual orientation, respectively... By awarding some degree of deference to the EEOC's interpretation of "sex," the judicial system will have a swift, powerful, and constitutionally permissible avenue of providing immediate redress for LGBT victims of workplace discrimination.).

15. William N. Eskridge Jr., *Title VII's Statutory History and the Sex Discrimination Argument for LGBT Workplace Protections*, 127 YALE L.J. 322 (2017), <https://www.yalelawjournal.org/feature/title-viis-statutory-history-and-the-sex-discrimination-argument-for-lgbt-workplace-protections> (Arguing that Title VII's bar to employment discrimination "because of... sex" applies to discrimination against LGBT people based on the 1) the ordinary meaning of the statute, read as a whole and in light of its purpose; 2) the increasing acceptance of LGBT people in the workplace from the mid-1960s to the present; 3) Supreme Court decisions providing constitutional protection for LGBT people from discrimination: "As late as 2003, 'homosexuals' could constitutionally be considered presumptive criminals, but the Supreme Court has for twenty years been developing a constitutional norm that gay people cannot be singled out for special legal exclusions without a rational public justification;" and 4) the Supreme Court's broad interpretation of Title VII to bar gender stereotyping, which Congress ratified and expanded in its 1991 Amendments to Title VII, which also reaffirmed its statutory mission to ensure a merit-based workplace free from sex-based decision making, even when sex is but one "motivating factor" in the discrimination: "Because LGBT persons are gender minorities and because anti-LGBT discrimination is rooted in rigid gender roles, Title VII today bars discrimination because of the sex of the employee's partner/spouse, just as it bars discrimination because of the race or religion of his or her partner/spouse.").
16. Alexander M. Nourafshan, *The New Employment Discrimination: Intra-LGBT Intersectional Invisibility and the Marginalization of Minority Subclasses in Antidiscrimination Law*, 24 DUKE J. GENDER L. & POL'Y 107 (2017), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1316&context=djglp> ("There is pervasive discrimination against LGBT employees in the workplace resulting in a number of consequences, including lower incomes and on-the-job harassment for LGBT employees... In states where sexual orientation is included as a protected class in employment discrimination statutes, claims of sexual orientation are brought almost as frequently as claims of race and sex discrimination, despite the relatively small proportion of the overall workforce made up of gays and lesbians.... Discrimination against gays and lesbians appears to be endemic to the American workplace: 42% of gays and lesbians report experiencing harassment as a result of their sexual orientation, and 16% report losing a job as a result of sexual orientation. Interestingly, one-third of LGBT employees are not open with any co-workers about their sexual orientation or gender identity... there are also alarming inequalities among gays and lesbians in terms of income, wealth, and employment that vary dramatically by race. For example, black male same-sex couples earn \$23,000 less than white male same-sex couples, and black female same-sex couples earn \$21,000 less

than white female same-sex couples... Further, LGBT people of color are much more likely to be employed in lower-paying government jobs and to lack private health coverage... Discrimination against gays and lesbians in the workplace is unquestionably rampant, but transgender individuals report even higher levels of on-the-job discrimination, social marginalization, and economic hardship.”).

17. Ashley Attia, *Explicit Equality: The Need for Statutory Protection Against Anti-Transgender Employment Discrimination*, 25 S. CAL. INTERDISC. L.J. 151 (2016), <https://gould.usc.edu/why/students/orgs/ilj/assets/docs/25-1-Attia.pdf> (“Those who identify as transgender frequently suffer from extensive discrimination in the workplace...In fact, a recent nationwide study revealed that nearly half of surveyed trans people have never been offered a job while living openly as a transgender person. Furthermore, on average, transgender workers have twice the unemployment rate of non-transgender workers... According to the National Transgender Discrimination Survey, a trans American is four times more likely than an average American to have a household income below \$10,000. Additionally, almost one in five transgender Americans reported being homeless at some point in their lives. Even when transgender persons are successful in obtaining jobs, they are often faced with hostile work environments. In fact, ninety percent of trans people surveyed... reported experiencing harassment, mistreatment, or discrimination on the job. Such treatment includes being frequently subjected to “anti-transgender slurs, jokes and verbal harassment...Furthermore, discrimination against transgender workers can also result in negative performance evaluations, missed promotions, and unfair terminations...The latter often results in trans individuals facing even greater difficulties in finding new employment. Currently, the legal landscape in the United States does not adequately protect transgender employees from being subjected to such employment discrimination... this patchwork of legal rules is insufficient to protect trans people in the employment context...legislation explicitly prohibiting discrimination based on gender identity must be adopted at the national level and in every state.”).
18. Skylar Davidson, *Gender Inequality: Nonbinary Transgender People in the Workplace* (2016), https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1331&context=masters_theses_2 (finding that being out as a nonbinary transgender person negatively affects nonbinary transgender people's employment outcomes; and reviewing research documenting workplace discrimination against transgender and non-binary people: “Though all transgender people have higher unemployment rates than the general population, outness has different effects on nonbinary transgender people based on sex assigned at birth, with those assigned male at birth tending to be discriminated against in hiring but those assigned female at birth more likely to experience differential treatment once hired. Race also contributes to differential treatment in the workplace... transgender women tend to have worse employment experiences than nonbinary transgender people and transgender men.”).
19. Adele Kimmel, *Title IX: An Imperfect but Vital Tool To Stop Bullying of LGBT Students*, 125 YALE L.J. 2006 (2016), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.searchencrypt.com/&httpsredir=1&article=5762&context=yjl> (“LGBT students are bullied at dramatically higher rates than other students. School bullying generally, and the targeting of LGBT

students in particular, has recently garnered national attention as a serious problem that needs to be solved...If federal courts and agencies consistently considered the full spectrum of gender stereotypes and recognized that bullying based on anti-LGBT animus is also sex discrimination, Title IX would better protect LGBT students from harassment...This Feature also discusses the need for legislation that expressly prohibits discrimination based on actual or perceived sexual orientation and gender identity. I argue that this express enumeration is needed to ensure both that schools clearly understand their duty to prevent a hostile educational environment and that LGBT students clearly understand their right to an equal education.”).

20. Aaron Curtis, *Conformity or Nonconformity? Designing Legal Remedies to Protect Transgender Students from Discrimination*, 53 HARVARD J. ON LEGIS. 459 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2785846 (discussing discrimination and harassment of transgender elementary and secondary students, including harassment from their peers; lack of access to appropriate restrooms and locker rooms, and dress codes that prohibit them from wearing clothes consistent with their gender identities; as well as inappropriate and ineffective responses from teachers and administrators to such discrimination and harassment).
21. Stacey Michel, *Not Quite a First Place Finish: An Argument That Recent Title IX Policy Clarification from the United States Department of Education Does Not Adequately Protect Transgender Interscholastic Athletes*, 25 LAW & SEXUALITY: A REVIEW OF LESBIAN, GAY, BISEXUAL & TRANSGENDER LEGAL ISSUES 145 (2016), <https://heinonline.org/HOL/P?h=hein.journals/lsex25&i=155> (discussing both discriminatory and inclusive state policies regarding transgender athletes; the need to protect transgender athletes from discrimination; the inadequacy of current protections; and recommending explicitly adding gender identity to Title IX, or interpreting its prohibition of sex discrimination to include discrimination against transgender students and athletes).
22. Isaac Saidel-Goley, *The Right Side of History: Prohibiting Sexual Orientation Discrimination in Public Accommodations, Housing, and Employment*, 31 WIS. J.L. GENDER & SOC'Y 117 (2016), <http://hosted.law.wisc.edu/wordpress/wjlg/files/2017/03/Saidel-Goley-Article.pdf> (discussing discrimination against LGBTQ people in public accommodations, housing, and employment; the inadequacy of current legal protections; and recommending protections for LGBTQ people from such discrimination in a variety of ways including new federal civil rights legislation and the interpretation of sex discrimination to include LGBTQ people under current federal civil rights laws and the Equal Protection Clause).
23. Melissa Wasser, *Legal Discrimination: Bridging the Title VII Gap for Transgender Employees*, 77 OHIO ST. L.J. 1109, 1110-1123 (2016), https://kb.osu.edu/bitstream/handle/1811/79950/OSLJ_V77N5_1109.pdf (discussing termination of a transgender employee of a nursing home in Alabama; surveys documenting discrimination against LGBT people; and inadequacy of current state and local laws).
24. Ann E. Tweedy and Karen Yescavage, *Employment Discrimination against Bisexuals: An Empirical Study*, 21 WILLIAM & MARY J. OF WOMEN & THE LAW 699 (2015), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1411&context=wmjowl> (providing

a literature review of discrimination against bisexual people; presenting the results of a new study showing high levels of discrimination against bisexual people; and discussing why case law underrepresents such experiences: “our respondents reported significant levels of employment discrimination and yet very few of them had sought any kind of relief. None had sought relief in the court system. Given the aforementioned health and mental health statistics and the effects that discrimination can have on health and mental health, the high level of discrimination revealed in our survey results is not surprising. This Article...examines the likely reasons for bisexual invisibility in the case law and bisexuals’ apparent reluctance to sue for discrimination in the workplace, and it recommends steps that judges, lawyers, and employers can take to improve bisexuals’ prospects for remedying discrimination.”).

25. Lucien J. Dhooge, *Public Accommodation Statutes and Sexual Orientation: Should There be a Religious Exemption for Secular Businesses?*, 21 WILLIAM & MARY J. OF WOMEN & THE LAW 319 (2015), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1403&context=wmjowl> (arguing that including a religious exemption for secular businesses from public accommodation statutes that prohibit discrimination on the basis of sexual orientation would be unworkable, create a “two-tier society,” and is harmful to LGBT people; and that state-sanctioned discrimination is contrary to the fundamental principles of justice and equality underlying the U.S. legal system.).

26. Lisa Bornstein, and Megan Bench, *Married on Sunday, Fired on Monday: Approaches to Federal LGBT Civil Rights Protections*, 22 WM. & MARY J. WOMEN & L. 31, 32 (2015), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1415&context=wmjowl> (“Yet even while the movement for LGBT rights has seen notable successes and increased protections, there remain concurrent efforts—some with renewed vigor in the wake of the recent marriage equality decision—to restrict rights and allow discrimination against LGBT individuals. In a majority of states, for example, it remains legal to discriminate on the basis of sexual orientation or gender identity in employment, housing, and public accommodations.”).

27. Elias Shebar, *Title IX—A New Frontier for the Rights of Transgender Youth? The Demand for Federal Regulations Clarifying the Act’s Applicability*, 22 CARDOZO J. OF LAW & GENDER 155 (2015), <https://heinonline.org/HOL/P?h=hein.journals/cardw22&i=171> (describing disproportionate rates of discrimination and violence faced by transgender youth and in the educational context, and the need for more explicit protections under Title IX’s prohibition of sex discrimination).

28. Ira C. Lupu, *Moving Targets: Obergefell, Hobby Lobby, and the Future of LGBT Rights*, 7 ALA. C.R. & C.L. L. REV. 1, 5-9 (2015), <https://harringtonparkpress.com/download/oa-articles/Moving-Targets-Obergefell-Hobby-Lobby-and-the-Future-of-LGBT-R.pdf> (“Although the Supreme Court has never formally elevated the standard of review in Fifth or Fourteenth Amendment cases involving sexual orientation, it is hard to imagine a federal court upholding any state policy that explicitly discriminates based on sexual orientation... no court would find any constitutionally legitimate basis for any formal policy of exclusion, based on sexual orientation, from state created opportunities. Whether the policy is based on prejudice, animus, or sincere religious belief, it rests on reasons that the state is forbidden to pursue. Governmental policies driven by prejudice or animosity violate the Equal Protection Clause,

and governmental policies that rest exclusively on religious propositions violate the Establishment Clause.”).

29. Rachel C. Kurzweil, *“Justice is What Love Looks Like in Public”: How the Affordable Care Act Falls Short on Transgender Health Care Access*, 21 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 199 (2014),
<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1396&context=crsj>
(describing main barriers to accessing health care for transgender people and calling for federal anti-discrimination legislation in employment and health care: “Access and discrimination go hand-in-hand as discrimination has historically led to limited access and inadequate care for the LGB and Transgender community. The main barriers to care are employment discrimination against transgender individuals, lack of employment insurance coverage for transition-related care, insurance discrimination based on transgender status, and lack of insurance coverage for transition-related care. These barriers to care are found in both private and government provided health insurance programs.”).
30. Gail Hammer, *Transparent: When Legal Fictions and Judicial Imagination Make Facts Disappear, They Enforce Transphobic Discrimination*, 30 COLUM. J. GENDER & L. 119 (2016),
https://academiccommons.columbia.edu/download/fedora_content/download/ac:206518/COLUMBIA/TRANSPARENT-WHEN_LEGAL_FICTIONS_AND.pdf (discussing widespread discrimination against transgender people in every facet of their life, including employment, housing, public accommodations, credit, marriage, parenting, and law enforcement; and the impact of judges’ lack of understanding of the lives of transgender people on their access to justice— with a focus on family law issues).
31. Andrew Kravis, *Is the Inability to Marry a Marital Status?* Levin v. Yeshiva University and the Intersection of Sexual Orientation and Marital Status in Housing Discrimination, 24 COLUM. J. GENDER & L. 1 (2012),
<https://www.thefreelibrary.com/Is+the+inability+to+marry+a+marital+status%3f+Levin+v.+Yeshiva...-a0343364309> (discussing inadequacy of current legal protections and arguing for explicit prohibitions of discrimination, including in the Fair Housing Act, on the basis of marital status and sexual orientation in order to fully protect LGBT people from housing discrimination; and providing a summary of two original fifty-state surveys, detailing which state housing laws protect against marital status discrimination and which states protect against sexual orientation discrimination).
32. Stuart Biegel, *Unfinished Business: The Employment Non-discrimination Act (ENDA) and the K-12 Education Community*, 14 N.Y.U. J. LEGIS. & PUB. POL’Y 357 (2011),
<http://www.nyujlpp.org/wp-content/uploads/2012/10/Stuart-Biegel-Unfinished-Business-The-Employment-Non-Discrimination-Act-and-the-K-12-Education-Community.pdf> (documenting the mistreatment of LGBT employees in America’s public schools over the past seventy-five years; situating this mistreatment within the larger context of ongoing employment discrimination against gay and gender non-conforming persons throughout the country; and examining how passage of federal civil rights legislation can improve the quality of life for Americans of every sexual orientation and gender identity).

33. David B. Cruz, *Acknowledging the Gender in Anti-Transgender Discrimination*, 32 LAW & INEQUALITY 257 (2014), <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1196&context=lawineq> (courts should interpret Title VII's prohibition of sex discrimination to include discrimination on the basis of gender identity based on traditional rules of statutory interpretation, deference to the EEOC's interpretation, and the high levels of discrimination faced by transgender people).
34. Justin Muehlmeier, *Toward a New Age of Consumer Access Rights: Creating Space in the Public Accommodation for the LGBT Community*, 19 CARDOZO J. OF LAW & GENDER 781 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269345 (arguing that consumer protection laws do not serve the LGBT community despite the fact it is an identifiable class experiencing discrimination; and recommending that the federal Fair Housing Act and the Civil Rights Act of 1964 be amended to include sexual orientation — and that the definition of “public accommodation” must include any establishment open to the public, in order to protect the LGBT community in its unique context of discrimination).
35. Travis F. Chance, *“Going to Pieces” Over LGBT Health Disparities: How an Amended Affordable Care Act Could Cure the Discrimination That Ails the LGBT Community*, 16 J. Health Care L. & Pol'y 375 (2013), <http://digitalcommons.law.umaryland.edu/jhclp/vol16/iss2/5> (discussing evidence of discrimination against LGBT people in health care and in other areas of public life; the impact of such discrimination on LGBT health; and the inadequacy of current laws and policies to combat such discrimination and address LGBTQ health disparities).
36. Jennifer C. Pizer, Brad Sears, Christy Mallory and Nan D. Hunter, *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 LOY. L.A. L. REV. 715 (2012), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Pizer-Mallory-Sears-Hunter-ENDA-LLR-2012.pdf> (providing a comprehensive review of evidence documenting discrimination against LGBT employees in public and private sectors and calling for protections through federal civil rights statutes and under the U.S. Constitution).
37. R. Kent Piacenti, *Toward a Meaningful Response to the Problem of Anti-gay Bullying in American Public Schools*, 19 VA. J. SOC. POLICY 58 (2011), <http://vjspl.org/wp-content/uploads/2019/02/20120122-Piacenti-Complete.pdf> (arguing that current law is inadequate to meaningfully address bullying of LGBT students in schools and calling for amending Title IX to explicitly protect LGBT students).
38. Jason A. Wallace, *Bullicide in American Schools: Forging a Comprehensive Legislative Solution*, 86 IND. L. J. 735 (2011), <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1026&context=ilj> (discussing research showing an “epidemic of anti-gay bullying in schools” and its detrimental effects on LGBT students, the inadequacy of current remedies, and proposing a federal statute to combat anti-gay bullying).

39. Katherine A. Womack, *Please Check One—Male or Female?: Confronting Gender Identity Discrimination in Collegiate Residential Life*, 44 U. RICH. L. REV. 1365 (2010), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1024&context=law-student-publications> (discussing impact of harassment, discrimination and sex segregated facilities on transgender youth in foster care, youth shelters, prisons, juvenile detention facilities, bathrooms, and college campus housing facilities; and calling for inclusion of gender identity discrimination under Title IV's prohibition of sex discrimination and through federal legislation that explicitly prohibits gender identity discrimination).
40. Todd A. DeMitchell, Suzanne Eckes and Richard Fossey, *Sexual Orientation and the Public School Teacher*, 19 BOSTON U. PUBLIC INTEREST L.J. 65 (2009), <https://www.bu.edu/pilj/files/2015/09/19-1DeMitchellEckesandFosseyArticle.pdf> (discussing history and current practice of discrimination against LGBT school teachers and the need to strengthen protections under state and federal civil rights state, as well as under the Equal Protection Clause and privacy rights under the Due Process Clause: "GLBT teachers continue to face discrimination in public schools throughout the country. The history of the climate for gay and lesbian teachers reveals how contentious being gay and being a teacher has been and still is.").
41. Daniella Lichtman Esses, *Afraid to Be Myself, Even at Home: A Transgender Cause of Action Under the Fair Housing Act*, 42 COLUMBIA J. OF L. & SOCIAL PROBLEMS 465 (2009), <https://www.questia.com/library/journal/1P3-2009827221/afraid-to-be-myself-even-at-home-a-transgender-cause> (arguing that housing discrimination against transgender people is pervasive; that current laws and policies provide inadequate protection from such discrimination; and that such discrimination should be prohibited as sex discrimination under the Fair Housing Act).
42. Michelle Dietert and Dianne Dentice, *Gender Identity Issues and Workplace Discrimination: The Transgender Experience*, 14 J. OF WORKPLACE RIGHTS 121 (2009), https://www.researchgate.net/publication/228462098_Gender_Identity_Issues_and_Workplace_Discrimination_The_Transgender_Experience (study based on interviews of 26 transgender people documenting various forms of discrimination they faced in the workplace and recommending the passage of federal civil rights protections).
43. Nancy Knauer, *LGBT Elder Law: Toward Equality in Aging*, 32 HARV. J.L. AND GENDER 1-58 (2009), <https://ssrn.com/abstract=1309182> (discussing the unique needs and vulnerabilities of LGBT elders, including facing discrimination and harassment in senior housing and nursing homes; and calling for explicit federal protections to protect housing, employment, and public accommodations discrimination).
44. Jaime E. Hovey, *Nursing Wounds: Why LGBT Elders Need Protection from Discrimination and Abuse Based on Sexual Orientation and Gender Identity*, 17 ELDER L.J. 95 (2009), <https://docplayer.net/50024481-Nursing-wounds-why-lgbt-elders-need-protection-from-discrimination-and-abuse-based-on-sexual-orientation-and-gender-identity.html> (discussing that LGBT elders are especially susceptible to abuse, neglect, and discrimination in nursing homes and recommending explicit protections from sexual orientation and gender identity discrimination in state and federal antidiscrimination statutes: "elderly LGBT Americans still

face the persistent homophobia and heterosexism of nursing home staff and fellow residents.”).

45. M. V. Lee Badgett, Brad Sears, Holning Lau, and Deborah Ho, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*, 84 CHICAGO-KENT LAW REVIEW 559 (2009), <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3705&context=cklawreview> (comprehensive of review evidence of discrimination against LGBT employees in the private and public sectors: “Despite the variations in methodology, context, and time period in the studies reviewed in this report, our review of the evidence demonstrates one disturbing and consistent pattern: sexual orientation-based and gender identity discrimination is a common occurrence in many workplaces across the country.”).

Appendix 5: Selected Court Opinions Supporting Constitutional Claims Related to Sexual Orientation and Gender Identity Discrimination, 2009-2019 (not including challenges to laws banning marriage for same-sex couples)

1. *Carcano v. Cooper*, 350 F. Supp. 3d 388 (M.D.N.C. 2018). Plaintiffs brought suit against the state of North Carolina alleging that HB 2 violated several federal laws and constitutional rights. HB 2 was a state law that required individuals to use bathrooms in all state and local government buildings according to their biological sex and preempted local ordinances that offered broader protections than state law. The court granted the defendants' motion to dismiss the plaintiffs' due process claim due to lack of standing. However, the court found that the plaintiffs had standing to pursue their equal protection claim related to the preemption provisions of HB 2.
2. *Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC (E.D. Mo. May 22, 2018). A transgender woman incarcerated in Missouri brought suit against the state for denying her medically necessary care for gender dysphoria, including hormone therapy, permanent hair removal, and access to gender-affirming canteen items. The court entered a preliminary injunction in favor of the plaintiff, finding that the state's denial of care likely violated the Eighth Amendment.
3. *Boyden v. Conlin*, 341 F. Supp. 3d 979 (W.D. Wis. 2018). Plaintiff, a transgender woman, was denied coverage for gender dysphoria through her employer's (state of Wisconsin) health insurance policy. The court determined that the exclusion constituted unlawful sex discrimination under Title VII and the ACA and violated the Equal Protection Clause. The court applied heightened scrutiny as "appropriate either on the basis of sex discrimination or through the recognition of transgender as a suspect or quasi-suspect class."
4. *Dumont v. Lyon*, 341 F. Supp. 3d 706 (E.D. Mich. 2018), motion to certify appeal denied, No. 17-CV-13080, 2018 WL 5292022 (E.D. Mich. Oct. 25, 2018). Plaintiffs, same-sex couples who wanted to adopt children, brought suit against state government officials in Michigan alleging that the state's practice of allowing taxpayer-funded child placement agencies to deny placement of children based on religious beliefs violated the Equal Protection Clause. The court denied the defendants' motion to dismiss the plaintiffs' equal protection claim, finding that they had stated a plausible claim that the defendants acted with animus toward same-sex couples and could not justify their action. The court determined that rational basis review would apply.
5. *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030 (S.D. Ind. 2018), appeal dismissed, No. 18-2696, 2018 WL 7203234 (7th Cir. Sept. 13, 2018). Plaintiff, a transgender public school student, brought suit against his school for denying him access to restrooms consistent with his gender identity. The court granted a preliminary injunction in favor of the plaintiff, finding that he was likely to succeed on both his Title IX and equal protection claims. The court applied heightened scrutiny in its equal protection analysis because bathroom policies are sex-based classifications.
6. *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.*, 318 F. Supp. 3d 1293 (M.D. Fla. 2018). Plaintiff, a transgender public high school student, brought suit against his school

for denying him access to restrooms consistent with his gender identity. The court entered judgment in favor of plaintiff, finding that the school's bathroom policy as applied to him violated Title IX and the Equal Protection Clause. The court applied heightened scrutiny in its equal protection analysis because bathroom policies are sex-based classifications.

7. *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730 (E.D. Va. 2018) and *Grimm v. Gloucester Cty. Sch. Bd.*, 869 F.3d 286 (4th Cir. 2017). Plaintiff, a transgender public high school student, brought suit against his school in Virginia for denying him access to restrooms consistent with his gender identity. The court denied the defendant's motion to dismiss the student's equal protection claim. In its analysis, the court determined that that heightened scrutiny applied because "transgender individuals constitute at least a quasi-suspect class" and because classification based on transgender status amounts to classification based on sex.
8. *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho 2018). Plaintiffs, two transgender women from Idaho, brought suit against the state alleging that its policy barring changes to sex on a birth certificate, absent a showing of error made at the time of birth, violated the Equal Protection and Due Process Clauses. The defendants admitted that the policy violated the Equal Protection Clause, even under rational basis review, and said that they would change the policy once they had a court order to that effect. The court held that discrimination against transgender people warrants heightened scrutiny because they are a quasi-suspect class, but that the state's birth certificate policy would be unconstitutional even under rational basis review.
9. *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704 (D. Md. 2018). Plaintiff, a transgender public school student, brought suit against his school for denying him access to locker rooms consistent with his gender identity. The court denied the defendants' motion to dismiss the plaintiffs' Title IX and equal protection claims. In its equal protection analysis, the court determined that heightened scrutiny applies because the student was classified according to sex-based stereotypes.
10. *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), cert. dismissed sub nom. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker ex rel. Whitaker*, 138 S. Ct. 1260, 200 L. Ed. 2d 415 (2018). Plaintiff, a transgender public high school student, brought suit against his school for denying him access to restrooms consistent with his gender identity. The court granted a preliminary injunction in favor of the plaintiff, finding that he was likely to succeed on both his Title IX and equal protection claims. The court applied heightened scrutiny in its equal protection analysis because bathroom policies are sex-based classifications.
11. *A.H. by Handling v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321 (M.D. Pa. 2017). Plaintiff, a transgender public elementary school student, brought suit against her school for denying her access to restrooms consistent with her gender identity. The court denied the defendant's motion to dismiss the plaintiff's Title IX and equal protection claims. Both parties agreed that heightened scrutiny should apply to the bathroom policy under equal protection analysis, citing case law in support. The court agreed and found that the defendant failed to advance any important government interest furthered by its policy.

12. *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267 (W.D. Pa. 2017). Plaintiffs, transgender public high school students, brought suit against their school for denying them access to restrooms consistent with their gender identity. The court granted a preliminary injunction in favor of the plaintiffs, finding that they were likely to succeed on their equal protection claim. The court applied heightened scrutiny, finding that transgender people are a quasi-suspect class under the four-factor suspect class analysis. In its analysis, the court noted, “As to these Plaintiffs, and more generally as to transgender individuals as a class, that characteristic bears no relationship to their ability to contribute to our society.”
13. *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep’t of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016). Plaintiff, a transgender public elementary school student, brought suit against her school for denying her access to restrooms consistent with her gender identity. The court granted a preliminary injunction in favor of plaintiff, finding that she was likely to succeed on her Title IX and equal protection claims. The court applied heightened scrutiny in its equal protection analysis, finding that transgender people are a quasi-suspect class under the four factor suspect class analysis.
14. *La Manna v. City of Cornelius*, 276 Or. App. 149, 366 P.3d 773 (Jan. 27, 2016). Plaintiff, a gay man, applied for a police officer position with the City of Cornelius Police Department in Oregon. The plaintiff was personal friends with the department’s chief. Following successful initial interviews, the department chief called the plaintiff and said that the city manager was “fired up” about his candidacy and wanted him removed from the hiring process. The chief initially advised the plaintiff not to withdraw, but called him a few days later and told him to withdraw because the city manager said the chief could lose his own job if plaintiff did not withdraw. The plaintiff filed suit alleging discrimination based on sexual orientation. He alleged that an officer who knew he was gay influenced the city manager’s decision to force him to withdraw, and that, although the city manager claimed that he forced the plaintiff to withdraw because of his friendship with the department chief, the department had hired two heterosexual friends of the chief in the past. The trial court granted summary judgment in favor of defendant, but the appellate court reversed, finding that plaintiff had produced enough evidence of sexual orientation discrimination to overcome summary judgment.
15. *Young v. Giles Cty. Bd. of Educ.*, 181 F. Supp. 3d 459 (M.D. Tenn. 2015). Plaintiff, a public high school student in Tennessee, brought suit against her school after it disciplined her for wearing a t-shirt that read, “Some People Are Gay, Get Over It.” On the day plaintiff wore the shirt, the principal called her to the front of the cafeteria in front of other students and told her that she could not wear that shirt or “any other shirt referencing LGBT rights.” Granting the student’s motion for summary judgment, the court found that “student expression on LGBT issues is speech on a purely political topic, which falls clearly within the ambit of the First Amendment’s protection.”
16. *Cummings v. Greater Cleveland Reg’l Transit Auth.*, 88 F. Supp. 3d 812 (N.D. Ohio 2015). Plaintiff, a transgender woman, brought suit against her employer, Greater Cleveland Regional Transit Authority, alleging that it discriminated against her based on her race, gender, and gender identity by denying her equal pay and promotions. The court denied the defendant’s motion to dismiss the equal protection claim, holding that the plaintiff had sufficiently alleged that a custom or practice of discrimination existed at the transit authority.

17. *Bassett v. Snyder*, 951 F. Supp. 2d 939 (E.D. Mich. 2013). Plaintiffs, same-sex couples, filed suit arguing that a Michigan state law prohibiting public employers from providing benefits to same-sex partners of employees violated their equal protection and due process rights. The court found that gay and lesbian people satisfy the heightened scrutiny factors, but went on to apply rational basis review because it was bound by Sixth Circuit precedent holding that sexual orientation discrimination is not entitled to heightened scrutiny.
18. *Hatcher v. Desoto County Sch. Dist. Bd. Of Educ.*, 939 F. Supp. 2d 1232 (M.D. Fla. 2013), *aff'd Hatcher ex rel. Hatcher v. Fusco*, 570 F. App'x 874 (11th Cir. 2014). Plaintiff, a public high school student in Florida, brought suit against her school after it disciplined her for participating in the National Day of Silence, a peaceful protest to bring awareness to LGBT bullying. The court denied the defendants' motion to dismiss, finding that "the events...support the plaintiff's First Amendment claims."
19. *Dawkins v. Richmond Cty Schools*, No. 1:12CV414, 2012 WL 1580455 (M.D.N.C. May 4, 2012), adopted by *Dawkins v. Richmond Cty Schools*, No. 1:12-CV-2014 (M.D.N.C. Feb. 19, 2014). Plaintiff, a public school teacher, brought suit against his former employer, a school district in North Carolina, alleging that his contract was not renewed because of his sexual orientation. According to the teacher, the school's principal told him that he "didn't belong here," and reported that parents had complained about him teaching their children because he was gay. The teacher also stated that after news of his non-renewal spread, other teachers began to make homophobic comments and jokes about him and that the principal was "outraged" when she found out that his partner visited him at the school. A district court allowed the teacher's equal protection claim to proceed.
20. *Gill v. Devlin*, 867 F. Supp. 2d 849 (N.D. Tex. 2012). Plaintiff, a female teacher who held a temporary position at a public college in Texas, was accused by a male student of flirting with female students. The teacher denied the accusations when confronted. The chair of the English Department responded to her "with a lengthy diatribe about 'homosexuals' and how the public views them." He told her that the school was a "conservative institution" that "did not like homosexuals." The teacher was ultimately not hired for a permanent position at the school. In denying a motion to dismiss, the court concluded "that in 2009, when Devlin and Howell are alleged to have failed to hire Gill as a permanent instructor because of her sexual orientation, the unconstitutionality of sexual-orientation discrimination lacking a rational relationship to a legitimate governmental aim was clearly established."
21. *Parents, Families, & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888 (W.D. Mo. 2012). Plaintiffs, LGBT organizations and a public school student, brought suit against a public school alleging that the school used an internet filter that blocked sites with positive messages about LGBT issues, but not those with negative messages. Applying heightened scrutiny, the court decided that the school's blocking system would likely be found to violate the First Amendment because it discriminated based on viewpoint. The court granted a preliminary injunction in favor of the plaintiffs.
22. *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011). Plaintiff, a former employee of the Georgia General Assembly Office of Legislative Counsel, brought suit against the office alleging that she was fired because of her gender identity. According to the plaintiff, when she told her

supervisor that she was ready to proceed with her gender transition, he told her that it was “inappropriate, that it would be disruptive, that some people would view it as a moral issue, and that it would make [her] coworkers uncomfortable” —and she was summarily fired. The district court granted summary judgment in favor of the plaintiff and the Eleventh Circuit affirmed. The Eleventh Circuit applied heightened scrutiny in its equal protection analysis, finding that discrimination against transgender people is a form of discrimination based on sex.

23. *Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011). Plaintiffs, employees of the state of Arizona, brought suit against the state alleging that a state law denying employment benefits to same-sex domestic partners of state employees on the same terms they were available to different-sex spouses violated the Equal Protection and Due Process Clauses. The court stated that it need not determine if heightened scrutiny was proper because the statute failed even under rational basis review.
24. *Walsh v. Tehachapi Unified Sch. Dist.*, 827 F. Supp. 2d 1107 (E.D. Cal. 2011). Plaintiff, the mother of a deceased 13 year-old boy, filed a complaint against a school district in California alleging that it failed to protect her son from anti-LGBT harassment and bullying. After the student came out, other students routinely called him derogatory names and told him to “kill himself” and “burn in hell.” Students bumped him while he walked; threw food, bottles, pencils, and erasers at him; and on one occasion, attempted to shove a pencil up his pants. Instead of intervening, a number of teachers also made disparaging comments in front of him and his classmates, including betting on when he would “come out,” asking what was “wrong” with him, and saying he was “fruity,” “ugly” and “in need of help.” After being assaulted by a group of classmates one day, he hung himself in his backyard. The court denied school administrators’ motion to dismiss the plaintiff’s equal protection claim.
25. *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135 (N.D.N.Y 2011). Plaintiff, a former public school student in New York, filed a complaint alleging that school administrators discriminated against him based on his sex and sexual orientation and were deliberately indifferent to harassment of him by staff and students. The court held that his First Amendment claims survived a motion to dismiss because the school did not recognize the student’s Gay Straight Alliance (GSA) to the same extent it recognized other student groups. The court also denied the defendant’s motion to dismiss the plaintiff’s equal protection claim, with the court determining that rational basis review applied.
26. *McMillen v. Itawamba County Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010). Plaintiff, a public high school student in Mississippi, was told that she could not attend prom with her girlfriend or wear a tuxedo. In considering a preliminary injunction, the court determined that the school violated the student’s First Amendment right to expression by both not allowing her to wear a tuxedo and by denying her request to bring her girlfriend to the prom.
27. *Stroder v. Ky. Cabinet for Health & Family Svcs*, No. 3:09-CV-00947-H, 2012 WL 1424496 (W.D. Ky., Apr. 24, 2010). Plaintiff, a former employee of the state of Kentucky, filed suit in federal court alleging that he was fired because of his sexual orientation. The state agency terminated him after it found emails exchanged between the plaintiff and a co-worker. The court found that the agency’s enforcement of its internet usage policy “focused

disproportionately on homosexual employees, and more particularly, friendly homosexual bantering within emails” and that the agency discriminated against him because of his sexual orientation in violation of the Equal Protection Clause.

Appendix 6. Examples of Public Sector Discrimination in Employment and Education included in Williams Institute Reports. The examples come from a variety of sources including court cases, administrative complaints, reports to community-based organizations, academic journals, newspapers and other media.

EMPLOYMENT

Alaska

- At a public hearing in Anchorage in June 2009, a letter was submitted by a transgender woman who said that she had been denied multiple state jobs because of her gender identity.¹³⁶ According to her letter, she was a former Marine and had been told she was highly qualified for a position at a state youth center. However, after she transitioned, her repeated applications for a position at the youth center were rejected. Later, she was hired as a psychiatric nursing assistant at a state-run nursing facility, but was fired after a problem arose with her social security number. She explained that her name change had caused the issue, and thought everything had been resolved. However, she reported that she was terminated without explanation a few days later in a letter that said her “services were no longer needed.” Later, she heard that a co-worker had been going around calling her “he/she.” After she was terminated, she was unable to find work in any of the fields she had experience in, including security, corrections, youth corrections, and mental health counseling.
- In 2013, a resident of Anchorage submitted a letter to the state legislature stating that she had experienced harassment and discrimination at her public school job because of her sexual orientation.¹³⁷ The woman reported that her boss had told her co-workers that she would not “have anyone with that lifestyle in [her] building.” The woman also stated that other LGBT people she worked with were not open about their sexual orientation because they feared discrimination.

Arizona

- A 2014 survey of faculty and staff at the University of Arizona found that LGBTQ+ faculty and staff had experienced harassment and discrimination on campus.¹³⁸ Nearly 75% of LGBQ+ and 18% of trans faculty and staff said that they had heard anti-LGBTQ+ slurs and comments on campus.¹³⁹ Six percent of LGBQ+ and 9% of trans faculty and staff said they heard these comments once per day.¹⁴⁰ Over four percent of LGBTQ+ faculty and staff said they felt intimidated or threatened, and 3% said they feared for their physical safety on campus because of their sexual orientation or gender identity.¹⁴¹

¹³⁶ Letter from Laura E. O’Lacy to Anchorage Assembly, June 2009 (writing in support of Anchorage Ordinance 64).

¹³⁷ Letter from Anchorage Resident to Rep. Beth Kerttula, Apr. 6, 2013 (writing in support of HB139) (on file with author).

¹³⁸ LAUREN PRING ET AL., UNIV. OF ARIZ., LGBTQ+ NEEDS ASSESSMENT REPORT (2014), <http://lgbtq.arizona.edu/sites/lgbtq.arizona.edu/files/LGBTQA-NeedsAssessmentNarrativeReportFINAL.pdf>.

¹³⁹ *Id.* at 45.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

Nearly one-quarter (24%) of LGBTQ+ faculty and staff were not out to any of their supervisors about their sexual orientation, and 29% were not out to any of their supervisors about their gender identity.¹⁴²

- In November 2015, a transgender corrections officer filed suit against the Arizona Department of Corrections alleging that his supervisors had “told him that other officers in the Department are offended by his gender, that [he] is not safe in the Department, and that they would not respond to emergency calls from him.”¹⁴³ Additionally, the officer alleged that “other correctional officers had made transphobic comments about him, that his co-workers had informed prison inmates of his [transgender] status, and that supervisors had failed to undertake any investigation or corrective action.”¹⁴⁴ The case was dismissed by mutual stipulation in January 2017.¹⁴⁵

Florida

- A 2017 survey of faculty and staff at the University of West Florida found that 18.6% of LGBQ employees reported one or more experiences of derogatory treatment based on sexual orientation on campus in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (16.3%), unfair treatment (7.0%), exclusion (2.3%), and harassment/bullying (4.7%).¹⁴⁶
- A prior survey of faculty and staff at the University of West Florida conducted in 2013 found that 45.5% of LGBQ faculty and staff had reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (45.5%), unfair treatment (13.6%), and exclusion (9.1%).¹⁴⁷
- A 2010 survey of faculty, staff, and students at the University of North Florida assessed the campus climate for LGBQ people. The survey found that nearly two-thirds (63%) of LGBQ faculty and staff reported that they had experienced at least one incident of bias or harassment because of their sexual orientation or gender identity.¹⁴⁸ Incidents of bias and harassment included a range of experiences such as hearing anti-LGBT jokes, being threatened or having property vandalized, being sexually or verbally harassed, and having employment problems.¹⁴⁹ A similar percentage of LGBQ faculty and staff (68%)

¹⁴² *Id.* at 40.

¹⁴³ *Doe v. Arizona*, No. CV-15-02399, 2016 U.S. Dist. LEXIS 36229, at *3, 6 (D. Ariz. Mar. 21, 2016) (denying in part the Department of Corrections’ motion to dismiss because Title VII of the Civil Rights Act of 1964 has been interpreted by courts to prohibit discrimination based on gender identity and plaintiff had exhausted administrative remedies).

¹⁴⁴ *Id.*; see also *Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII*, U.S. EEOC, https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm (last visited Apr. 18, 2019).

¹⁴⁵ Order granting Stipulation of Dismissal, *Doe v. Arizona*, No. CV-15-02399 (D. Ariz. Jan. 6, 2017).

¹⁴⁶ Unpublished data from campus diversity climate survey gathered by Susan E. Walch and colleagues in 2017 (on file with authors).

¹⁴⁷ Unpublished data from campus diversity climate survey gathered by Susan E. Walch and colleagues in 2013 (on file with authors).

¹⁴⁸ The survey used a non-probability sampling method. UNIVERSITY OF NORTH FLORIDA COMMISSION ON DIVERSITY: COMMITTEE ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUITY, UNIVERSITY OF NORTH FLORIDA CAMPUS CLIMATE SURVEY FOR SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION 24 (June 2011), <http://www.unf.edu/uploadedFiles/sa/lgbt/CampusClimateJune2011.pdf>.

¹⁴⁹ *Id.*

reported that they observed incidents of bias and harassment experienced by other LGBTQ people.¹⁵⁰

- Several faculty and staff members described specific incidents of harassment and discrimination. For example, a professor stated: “I was explicitly asked by UNF faculty to change my research agenda as a result of the fact that I wished to focus on ‘gay’ issues,” and a staff member stated: “Due to an earring associated with my sexual orientation, I was told by my supervisor that I should consider accommodating the ‘traditional’ values at the institution as to avoid damaging my credibility.”¹⁵¹
- In addition, 48% of LGBTQ respondents said that they believed being openly LGBT would harm a faculty or staff member’s chances of promotion at the university.¹⁵²
- Between 2013 and 2016, four openly-gay police officers resigned from the 51-member Wilton Manors Police Department citing a culture of abuse and homophobia within the department. According to reports, mistreatment of LGBT officers included the use of derogatory terms like “homo” and “faggot” at police headquarters, superiors in unmarked cars following LGBT officers to intimidate them, qualified LGBT officers saying they were passed up for promotions, and reports of superiors inspiring fear in LGBT subordinates. In response to complaints from LGBT officers, the Broward Sheriff’s Office was called in to investigate. The Sheriff’s office concluded that department policy had not been violated.¹⁵³
- In 2013, a college administrator filed a lawsuit against her former employer, the College of Central Florida, alleging that her contract was not renewed because of her sexual orientation.¹⁵⁴ The woman stated that she had received above-average evaluations for her work, but was demoted after she married her same-sex partner.¹⁵⁵ Following the demotion, the woman filed a discrimination complaint with the Florida Commission on Human Relations and was fired one month after the complaint was resolved in favor of the college.¹⁵⁶ The woman then filed a complaint in court alleging discrimination based on religion, sex stereotyping, and marital status.¹⁵⁷ In granting summary judgment to the college, the court stated that the woman’s religious discrimination claim “was based solely on [the college’s] alleged religious disapproval of her sexual orientation” and that her sex stereotyping claim “was merely a repackaged claim for discrimination based on sexual orientation.”¹⁵⁸ The court decided that sexual orientation discrimination was not an actionable form of discrimination under Title VII.¹⁵⁹

¹⁵⁰ *Id.* at 31.

¹⁵¹ *Id.* at 29.

¹⁵² *Id.* at 38.

¹⁵³ Jess Swanson, *Wilton Manors Police Department Faces Discrimination Claims*, NEW TIMES BROWARD-PALM BEACH (Sept. 7, 2016), <http://www.browardpalmbeach.com/news/wilton-manors-police-department-faces-discrimination-claims-8061843>.

¹⁵⁴ *Burrows v. College of Central Fla.*, No. 5:14-cv-197-Oc-30PRL (M.D. Fla. Dec. 17, 2014).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*; *Burrows v. College of Central Fla.*, No. 5:14-cv-197-Oc-30PRL (M.D. Fla. Sept. 5, 2015).

¹⁵⁹ *Id.*

Georgia

- In 2015, a security guard sued her employer, the state-owned Georgia Regional Hospital, alleging that the hospital discriminated against her based on sex in violation of Title VII.¹⁶⁰ The employee said that she was subjected to a hostile work environment because she was a lesbian and “identified with the male gender” by wearing clothing and a hairstyle typically worn by men.¹⁶¹ The district court dismissed the claim, stating that Title VII does not prohibit discrimination based on sexual orientation and “to say that an employer discriminated based on gender non-conformity is just another way to claim discrimination based on sexual orientation,”¹⁶² despite the Supreme Court’s holding in *Price Waterhouse v. Hopkins*¹⁶³ that discrimination based on gender non-conformity is actionable sex discrimination under Title VII. On appeal, the Eleventh Circuit held that the district court erred in dismissing the employee’s gender stereotyping claim, but affirmed the district court’s dismissal of her claim that sexual orientation discrimination is a form of sex discrimination prohibited by Title VII.¹⁶⁴
- In 2015, a former Atlanta police officer reached a \$140,000 settlement with the Atlanta Police Department, after being forced to take unpaid medical leave after suffering several grand mal seizures. She said that she had experienced the seizures “days after she complained of anti-gay comments directed at her” by a co-worker.¹⁶⁵

Idaho

- In 2013, a transgender police officer transitioned from male to female while working for a sheriff’s department in Idaho. According to reports, the sheriff told the officer that he had contacted some state administrators regarding her transition, and several of them said that they would have fired her on the spot, regardless of potential legal consequences. They reportedly stated that they would rather “pay out than deal with [her].”¹⁶⁶

Indiana

- In 2014, a woman alleged that her employer, a community college, denied her a full-time position because of her sexual orientation.¹⁶⁷ The trial court granted the employer’s motion to dismiss on the grounds that “sexual orientation is not recognized as a protected class under Title VII.”¹⁶⁸ In 2017, the Seventh Circuit reviewed this case and held that discrimination on the basis of sexual orientation is a form of sex discrimination under Title VII.¹⁶⁹ The Seventh Circuit reasoned that although a policy that discriminates based on sexual orientation does not apply to every woman or every man, it is nonetheless based on assumptions on appropriate behavior for a given sex.¹⁷⁰ Any decision based on the complainant dressing differently, speaking differently, or dating or

¹⁶⁰ *Evans v. Ga. Reg’l Hosp.*, No. CV-415-103, 2015 U.S. Dist. LEXIS 120618 (S.D. Ga. Sept. 5, 2016).

¹⁶¹ *Id.* at *2-*3.

¹⁶² *Id.* at *6-*8.

¹⁶³ 490 U.S. 228 (1989).

¹⁶⁴ *Evans v. Ga. Reg’l Hosp.*, 850 F.3d 1248 (11th Cir. 2017).

¹⁶⁵ Matt Hennie, *City to Pay LGBT Cop \$140,000 to Settle Lawsuit*, PROJECT Q ATLANTA (June 1, 2015, 10:29 AM), http://www.projectq.us/atlanta/city_to_pay_lgbt_cop_140000_to_settle_lawsuit?gid=16896.

¹⁶⁶ E-mail from Danielle Lundgren, Detective, Sheriff’s Office in E. Idaho, to Amira Hasenbush, Jim Kepner Law and Policy Fellow, The Williams Inst. Univ. of Cal. L.A. Sch. of Law (May 4, 2014, 10:14 PM PST) (on file with author).

¹⁶⁷ *Hively v. Ivy Tech Cmty. Coll.*, No. 3:14-CV-1791, 2015 WL 926015, at *1 (N.D. Ind. Mar. 3, 2015).

¹⁶⁸ *Id.* at *3.

¹⁶⁹ *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339, 340-341 (7th Cir. 2017).

¹⁷⁰ *Id.* at 346.

being married to a same-sex partner is a reaction based on sex and thus falls within Title VII's ban on sex discrimination.¹⁷¹

Kansas

- In 2017, a drama and art teacher at a public high school in Seneca reported that he began receiving anonymous threats after a photograph of him and a male friend circulated online. According to the teacher, the letters included comments like, "queers will burn and so will you," "we don't want fags in our school," and "homosexuals should not be teaching our kids...they are perverts and predators. They are not acceptable role models;" and many of the letters said he should be fired because of his sexual orientation. He also said that he was harassed in the classroom, his tire was punctured, and his car was vandalized with the word "f---t." The teacher reported the incident to the police, who made no finding. For his safety, the teacher requested leave from the school. After seven weeks of unpaid leave, the school administration told him to return or resign. Still fearing for his safety, he resigned and moved to California.¹⁷²
- In 2015, an employee of the University of Kansas reported that his supervisor regularly addressed him with derogatory language associated with gay men and sexually harassed him on multiple occasions. According to the employee, the university's Office of Institutional Opportunity and Access twice rejected requests to investigate. The employee filed a complaint based on sexual orientation discrimination and retaliation with the Office, which it did not investigate. The employee appealed the decision to the University's vice provost. The former employee agreed to mediation with the university facilitated by the Kansas Human Rights Commission.¹⁷³

Kentucky

- In 2013, the Louisville Human Relations Commission found in favor of a former Audubon Park police sergeant who was terminated because of his sexual orientation.¹⁷⁴ The sergeant was fired after three years of employment with the department, during which he was subjected to verbal harassment because he was gay. According to reports, anti-gay jokes were told in front of him, he was called derogatory names, and one of his co-workers told other officers that the sergeant had to go on medical leave due to injuries he suffered from having sex with his partner. The sergeant stated that he was fired after complaining about the mistreatment to the police chief. Following the Commission's determination, the sergeant and the police department settled the case privately.
- In 2009, a former state employee filed suit in federal court against the government agency he had worked for, alleging that the agency had fired him because of his sexual orientation.¹⁷⁵ The agency terminated the employee after it found emails exchanged between him and a co-worker which "referenced [the employee's] homosexual partner

¹⁷¹ *Id.* at 347.

¹⁷² Ariel Sobel, *After Relentless Harassment, Gay Kansas Teacher Driven From Job*, THE ADVOCATE, <https://www.advocate.com/crime/2018/4/20/after-relentless-harassment-gay-kansas-teacher-driven-job>.

¹⁷³ Celia Llopis-Jepsen, *KU Under Fire for Handling of LGBT Discrimination Claim*, TOPEKA CAPITAL JOURNAL, <https://www.cjonline.com/news/2015-12-10/ku-under-fire-handling-lgbt-discrimination-claim>.

¹⁷⁴ Andrew Wolfson, *Fired Gay Cop Details Harassment Allegations*, USATODAY.COM, Oct. 9, 2013,

<http://www.usatoday.com/story/news/nation/2013/10/09/fired-gay-cop-details-harassment-allegations/2956645/>.

¹⁷⁵ *Stroder v. Ky. Cabinet for Health & Family Svcs.*, No. 3:09-CV-00947-H, 2012 WL 1424496 (W.D. Ky., Apr. 24, 2010).

and included homosexual slang.” The court found that while the agency was “of course...entitled to enforce its own internal policies,” its enforcement of the internet usage policy “focused disproportionately on homosexual employees, and more particularly, friendly homosexual bantering within emails.” Because the gay employee was treated “so differently” under the policy from non-LGBT employees in “strikingly similar circumstances,” the court held that the agency discriminated against the employee because of his sexual orientation in violation of the equal protection clause of the U.S. Constitution.

Michigan

- A 2016 survey of faculty at the University of Michigan found that 28% of LGBTQ+ faculty members reported having experienced at least one discriminatory event over the previous 12 months.¹⁷⁶
- A 2012 survey of faculty, students, staff, and administrators at Western Michigan University found that 39.3% of gay or lesbian respondents and 76.9% of transgender respondents reported experiencing discrimination.¹⁷⁷
- In 2016, a transgender woman who was employed by the City of Detroit’s Office of Development and Grants announced to her coworkers that she would undergo gender confirmation surgery.¹⁷⁸ According to the employee, when she returned to work wearing women’s clothing, two complaints were filed alleging that she violated the office dress code—a code that human resources staff said did not exist.¹⁷⁹ In addition, the employee said that her office name plate was defaced with “Mr.” and a holiday gift bag containing a sex toy was left in her office along with a note that said “we don’t want people like you working here.”¹⁸⁰ The employee filed complaints with Detroit’s Human Rights Department, the U.S. Equal Employment Opportunity Commission (EEOC), and the Michigan Department of Civil Rights.¹⁸¹
- In 2016, a transgender professor filed a lawsuit against Saginaw Valley State University alleging that she had been discriminated against because of her gender identity. According to the professor, when she came out to her supervisor, the supervisor responded, “You disgust me! I can’t even stand to look at you! This is not about your so-called ‘gender identity.’ This is about you being a liar.” The professor said her administrative position was abruptly eliminated after she came out.¹⁸²

¹⁷⁶ RESULTS OF THE 2016 UNIVERSITY OF MICHIGAN FACULTY CAMPUS CLIMATE SURVEY ON DIVERSITY, EQUITY AND INCLUSION 4 (2016) <https://diversity.umich.edu/wp-content/uploads/2017/11/DEI-FACULTY-REPORT-FINAL.pdf>.

¹⁷⁷ Roger L. Worthington, WESTERN MICHIGAN UNIVERSITY, COMPREHENSIVE CAMPUS CLIMATE STUDY FOR DIVERSITY AND INCLUSION 2012-13 46 (2013),

<http://wmich.edu/sites/default/files/attachments/u5/2013/Final%20Campus%20Climate%20Study%20Full%20Report.pdf>.

¹⁷⁸ Mark Hicks, *Transgender worker sues Detroit over office harassment*, THE DETROIT NEWS (April 27, 2018),

<https://www.detroitnews.com/story/news/local/detroit-city/2018/04/27/transgender-worker-detroit-lawsuit/34302663/>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* No further information on these complaints is available at this time (7/24/2018).

¹⁸² Kate Wells, *Transgender Professor Sues Saginaw Valley State University for Alleged Discrimination*, MICHIGAN RADIO (Apr. 8, 2016), <https://www.michiganradio.org/post/transgender-professor-sues-saginaw-valley-state-university-alleged-discrimination>.

Mississippi

- In 2013, a gay juvenile corrections officer reported that he was terminated after his department discovered his sexual orientation in a police report.¹⁸³ The officer had called police when his boyfriend became physically violent towards him in his apartment.¹⁸⁴

Nebraska

- In 2012, a transgender employee of a public school reported to a community-based organization that she had been passed over for job promotions because of her gender identity.¹⁸⁵

North Carolina

- In 2013, a public school teacher reported that she was given a three-day suspension for showing students a popular music video that featured a song supporting marriage for same-sex couples.¹⁸⁶
- In 2011, a teacher brought suit against his former employer, a public school district, alleging that his contract was not renewed because of his sexual orientation.¹⁸⁷ According to the teacher, the school's principal told him that he "didn't belong here," and reported that parents had complained about him teaching their children because he was gay. The teacher also stated that after news of his non-renewal spread, other teachers began to make homophobic comments and jokes about him and that the principal was "outraged" when she found out that his partner had visited him at the school. A district court allowed the teacher's claim based on the equal protection clause of the U.S. Constitution to proceed.¹⁸⁸
- In 2011, a gay public school teacher and former North Carolina resident published an opinion piece in the Duke University Chronicle explaining that fear of employment discrimination kept him from moving back to his home state to teach: "I don't fear being fired for being gay, which is still possible in North Carolina, with the consistent failure to pass a state non-discrimination act that includes sexual orientation. In the Bronx, I don't fear being called into the principal's office and being told: 'Your services are no longer needed here.'" ¹⁸⁹

North Dakota

- In 2015, State Representative Joshua Boschee described instances of discrimination against LGBT people in North Dakota in testimony to the legislature. One instance

¹⁸³ John D. Sutter, *Opinion: No One Should Be Fired for Being Gay*, CNN.COM, Mar. 22, 2013, http://www.cnn.com/2013/03/22/opinion/sutter-employment-discrimination-lgbt/?hpt=hp_c1.

¹⁸⁴ *Id.*

¹⁸⁵ Share Your Story: Omaha's Gay, Lesbian, Bisexual & Transgender Discrimination in the Workplace, VOICE OMAHA, <http://voiceomaha.org/equal-employment/> (last visited Apr. 18, 2019).

¹⁸⁶ Alan Duke & Joe Sutton, *Teacher Suspended for Showing Class Macklemore's 'Same Love' Video*, CNN.COM, Sept. 12, 2013, <http://www.cnn.com/2013/09/12/showbiz/same-love-teacher-suspended/>.

¹⁸⁷ *Dawkins v. Richmond Cty Schools*, No. 1:12CV414, 2012 WL 1580455 (M.D.N.C. May 4, 2012), *adopted by Dawkins v. Richmond Cty Schools*, No. 1:12-CV-2014 (M.D.N.C. Feb. 19, 2014).

¹⁸⁸ *Dawkins v. Richmond Cty Schools*, No. 1:12-CV-2014 (M.D.N.C. Feb. 19, 2014).

¹⁸⁹ Jason Wagner, *Why I Don't Teach in North Carolina*, CHRONICLE (Duke Univ.), Sept. 20, 2011, <https://www.dukechronicle.com/article/2011/09/why-i-dont-teach-north-carolina>.

involved a speech and debate coach at a public school in Fargo who said that she was terminated after the school discovered that she was transgender.¹⁹⁰

Ohio

- In 2013, an Ohio appellate court denied relief to a gay bus driver who alleged that he was harassed by his co-workers because of his sexual orientation.¹⁹¹ The court held that sexual orientation is not a protected class under the state's nondiscrimination law, and therefore, he had no remedy for any harassment.¹⁹²
- In 2011, Cuyahoga County settled a lawsuit with a lesbian employee of the County Child Support Enforcement Agency for \$100,000.¹⁹³ The child support worker stated that she was passed over for at least 12 promotions only to learn that the positions were given to less qualified heterosexual applicants.¹⁹⁴

Pennsylvania

- In 2010, the State of Pennsylvania settled a case brought by a state prison guard who alleged that he was subject to discrimination because he was perceived to be gay.¹⁹⁵ Other guards subjected the victim to rumors, innuendo, and other ill treatment based on their perception of his sexual orientation.

South Carolina

- In October 2016, a lesbian teacher filed a complaint against a public high school in Pickens County alleging she was unlawfully fired in violation of Title IX of the Education Amendments as a result of defending a transgender student.¹⁹⁶ The teacher said she had allowed the student to use a teachers' restroom close to classrooms rather than the one restroom the school told the student to use, which was nearly a quarter mile away from the student's classes.¹⁹⁷ Although the teacher had not been previously observed by supervisors, the teacher said that within two weeks after her advocacy on behalf of the transgender student, nearly every assistant principal at the high school visited her class to observe and provide feedback and suggestions without providing sufficient time to implement changes.¹⁹⁸ The teacher alleged administrators subjected her to observations and criticisms that are part of a mentoring program that is designed to last for a full semester to allow teachers reasonable time for improvement, and that this conduct began to add to her stress and fear for her job.¹⁹⁹ She further stated that less than one month after her last evaluation in November 2016, she was asked to either resign or be terminated.²⁰⁰ The teacher said that as a result of the school's conduct, she lost her

¹⁹⁰ *Id.*

¹⁹¹ *Inskeep v. W. Reserve Transit Auth.*, 2013 WL 979054, *6 (Ohio Ct. App. Mar. 8, 2013)

¹⁹² *Id.* at *4.

¹⁹³ *Settlement, Shari Hutchinson v. Cuyahoga Cnty. Bd. of Comm'rs, et al.*, No. 08-CV-02966, 2011 WL 7560489 (N.D. Ohio Sept. 28, 2011).

¹⁹⁴ *Id.*

¹⁹⁵ *Pa. Prison Guard Settles Sex Perception Bias Suit*, CBS3, May 6, 2010, <http://cbs3.com/wireapnewspa/Western.Pa.prison.2.1678589.html> (last visited May 12, 2010).

¹⁹⁶ *Compl. at 1-3, 5-6, Matlis v. Sch. Dist. of Pickens Cty.*, No. 2016-CP-39-01232 (Ct. Com. Pl. Oct. 26, 2016).

¹⁹⁷ *Id.* at 5-6.

¹⁹⁸ *Id.* at 6, 9.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 6.

teacher accreditation and was put on “a list” barring her from teaching anywhere in the tristate area.²⁰¹ In October 2017, the parties settled out of court.²⁰²

- In May 2014, the mayor of Latta was recorded saying that he would “much rather have somebody who drank and drank too much taking care of my child than I had somebody whose lifestyle is questionable around children... . I’m not gonna let two women stand up there and hold hands and let my child be aware of it. And I’m not gonna see them do it with two men either.”²⁰³ These statements caused some to believe that he may have fired a lesbian police chief because of her sexual orientation, causing significant controversy.²⁰⁴ After the recording surfaced, the mayor was stripped of power in a special election, and the Town Council rehired the police chief.²⁰⁵
- In 2013, a transgender public safety employee sued his employer, the City of Cayce, for forcing him to wear a female bulletproof vest after he informed his supervisors and fellow officers that he was a transgender man and took leave to undergo surgery.²⁰⁶ The employee alleged that this decision was part of a pattern of conduct intended to embarrass or subordinate him, eventually leading to reassignment and a pre-textual firing.²⁰⁷ The parties settled the case.²⁰⁸

Tennessee

- In 2012, the Metropolitan Government of Nashville and Davidson County paid \$50,000 to settle a lawsuit brought by an employee of Metro Water Services.²⁰⁹ The employee alleged that for several years he was the target of anonymous graffiti, located in the work areas he would often visit as part of his job, containing homophobic statements and slurs.²¹⁰ The employee further alleged that his supervisors never attempted to discipline the co-workers who harassed him, and that a supervisor physically assaulted him at one point.²¹¹

Texas

- In 2017, a police officer with the Humble Independent School District Police Department filed a lawsuit against the department for harassment she experienced at work related to her sex and sexual orientation. According to the officer, she was asked “inappropriate questions about [her] sexual orientation and lifestyle” and was told that she “looked gay.” One supervisor reportedly told her that she “need[ed] to learn how to jump a battery...if [she wanted] to be a man.” A co-worker informed the officer that she was

²⁰¹ *Id.* at 9-10.

²⁰² Order of Dismissal, *Matlis v. Sch. Dist. of Pickens Cty.*, No. 8:16-cv-03679-MGL-JDA (D. S.C. Oct. 25, 2017), ECF No. 29.

²⁰³ Paul Bowers, *Latta’s Mayor Fired the Police Chief, But Town Council is Fighting Back*, CHARLESTON CITY PAPER (Apr. 2014).

²⁰⁴ *Id.*

²⁰⁵ AP, *Gay South Carolina Police Chief Crystal Moore Makes Historic Sheriff’s Run*, CBS NEWS (Aug. 21, 2016), <https://www.cbsnews.com/news/gay-south-carolina-police-chief-crystal-moore-makes-historic-sheriffs-run/>.

²⁰⁶ Dan McCue, *Transgender Worker Sues His City*, COURT HOUSE NEWS (May 3, 2013),

<https://www.courthousenews.com/transgender-worker-sues-his-city>.

²⁰⁷ *Id.*

²⁰⁸ Order of Dismissal in *Green v. City of Cayce*, No. 3:13-cv-1445-MBS-JDA (S.D.C. Mar. 31, 2014), ECF No. 30.

²⁰⁹ Metropolitan Government of Nashville and Davidson County Res. RS2013-804 (August 6, 2013),

https://www.nashville.gov/mc/resolutions/term_2011_2015/rs2013_804.htm.

²¹⁰ Jim Higgins, *Anti-Gay Graffiti leads to Likely a Large Settlement with Metro Nashville*, TENNESSEE EMPLOYMENT LAWYER BLOG (August 27, 2013), http://www.tennesseeemploymentlawyerblog.com/2013/08/antigay_graffiti_leads_to_like.html.

²¹¹ *Id.*

being treated badly because of her sexual orientation. Within a year being hired, the officer was told that she needed to “resign or quit.” The case is ongoing.²¹²

- In 2016, a gay corrections officer in Collin County, Texas was fired one month after he filed a lawsuit²¹³ alleging that his employer discriminated against him because of his sexual orientation.²¹⁴ He alleged that other officers harassed him and jeopardized his safety by not responding to his radio calls.²¹⁵ The officer voluntarily dismissed the underlying case, but his claim of retaliation is being investigated by the EEOC.²¹⁶
- In 2014, an Austin police detective, who is a lesbian, filed a lawsuit against the department for sexual harassment. The detective alleged that her male colleagues would “show her pornographic images of women, make explicit and inappropriate comments and ask [her] if she would have sex with [female victims or suspects they encountered].”²¹⁷

Virginia

- In 2012, a volleyball coach filed a complaint with Virginia Commonwealth University alleging that the school fired him because he was gay.²¹⁸ The coach had had a successful coaching career at VCU for eight years, but was terminated shortly after a new athletics director was hired. VCU’s internal investigation concluded that the termination was not discriminatory, but did not publicly state why he was fired.²¹⁹ During the same week in 2012 that the volleyball coach was fired from VCU, another openly gay employee in the athletics department was demoted.²²⁰ The woman had been an employee of VCU for over thirty years. VCU’s vice president of equity and diversity said that the female staffer and the coach were the only two employees in the athletics department to experience changes in their jobs after the new director arrived. The employee chose not to file a formal complaint with the university.

West Virginia

- In March 2013, the Lincoln County Board of Education voted to fire a middle school teacher. While the details are private, the teacher told the Lincoln Journal that the school system “trashed” her sexuality and “so-called lifestyle.”²²¹

²¹² Keri Blakinger, *Former Humble ISD Officer Presses Sexual Discrimination Suit*, CHRON, Feb. 13, 2017, <http://www.chron.com/news/houston-texas/houston/article/Former-Humble-ISD-officer-presses-sexual-10929968.php>.

²¹³ Boyd v. Collin County, Case 4:16-cv-00361 (E.D.Tex. 2016).

²¹⁴ John Wright, *Gay Corrections Officer Alleges Retaliation for Filing Suit*, TEXAS OBSERVER (Aug. 4, 2016), <https://www.texasobserver.org/gay-corrections-officer-alleges-retaliation-for-filing-suit/>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Ciara O'Rourke, *Austin Officer's Suit Alleges Retaliation*, AUSTIN AMERICAN-STATESMAN, Dec. 30, 2014, at B1.

²¹⁸ Jeffrey H. Martin, *Fired Gay VCU Coach Has New Job in Mind: His Old One*, USATODAY.COM, Dec. 20, 2012, <http://www.usatoday.com/story/sports/college/volleyball/2012/12/19/james-finley-fired-vcu-volleyball-investigation/1780795/>; Lou Chibbaro Jr., *Gay Coach Fired at VCU*, WASHINGTONBLADE.COM, <http://www.washingtonblade.com/2012/12/06/gay-coach-fired-at-vcu/>.

²¹⁹ Zachary Reid Richmond, *VCU Says Firing of Gay Women's Volleyball Coach Not Discriminatory*, Dec. 20, 2012, http://www.timesdispatch.com/sports/college/vcu/vcu-says-firing-of-gay-women-s-volleyball-coach-not/article_c2adebc8-4af2-11e2-a1d8-0019bb30f31a.html.

²²⁰ Mechelle Hankerson, *Administration Will Investigate Former Volleyball Coach's Firing*, COMMONWEALTHTIMES.COM, <http://www.commonwealthtimes.org/2012/12/03/administration-will-investigate-former-volleyball-coachs-firing/>.

²²¹ Sean O'Donoghue, *Fired Teacher Denies Trying to Turn Them Gay*, LINCOLN J., Mar. 7, 2013, <http://lincolnjournalinc.com/fired-teacher-denies-trying-to-turn-them-gay-p9667-1.htm> (last visited May 6, 2013).

Wyoming

- In 2015, the Administrator of the Wyoming Department of Workforce Services reported that the Department had been subject to 40 complaints of discrimination based on sexual orientation in the prior four-year period. According to the Administrator, the complaints included allegations of serious violence and abuse by co-workers, including one instance in which co-workers “placed human excrement in complainants’ lockers and lunchboxes,” and “one complainant alleged he was tied naked to the front of a pickup and then his co-workers played “chicken” with that pickup.”²²²

EDUCATION

Arizona

- The 2015 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 71% of respondents from Arizona said that they had experienced verbal harassment based on their sexual orientation at school, and 55% said that they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.²²³ Many students also reported experiencing physical harassment based on their sexual orientation (29%) or gender identity (20%) at school in the year prior to the survey.²²⁴ In addition, 11% of respondents reported that they had experienced physical assault at school because of their sexual orientation, and 10% of respondents said that they had experienced physical assault because of their gender identity at school in the year prior to the survey.²²⁵

Further, 58% of transgender respondents from Arizona reported that they were unable to use the bathroom or locker room at school that aligned with their gender identity; the same percentage were prevented from using their preferred name or pronouns in school.²²⁶ Less than half (40%) of the students reported having access to a Gay-Straight Alliance or similar club in school.²²⁷

Of LGBT students who were bullied or harassed at school, only 44% of students reported the incident to school staff.²²⁸ Less than one third (31%) of those who reported bullying or harassment to staff said that it resulted in effective intervention.²²⁹

- In response to the 2015 U.S. Transgender Survey, 48% of survey respondents from Arizona who were out or perceived as transgender while in grades K-12 said that they had experienced verbal harassment, 24% experienced physical assault, and 8%

²²² Ben Neary, *Wyoming Officials Look at Discrimination Protections for Gays*, CASPER STAR-TRIBUNE, Jan. 9, 2015, http://trib.com/news/state-and-regional/govt-and-politics/wyoming-officials-look-at-discrimination-protections-for-gays/article_82e50c65-e25b-531c-b9b7-b5d329a3a975.html.

²²³ GLSEN, SCHOOL CLIMATE IN ARIZONA 1 (2017), <https://www.glsen.org/sites/default/files/Arizona%20State%20Snapshot%20-%20NCS.pdf>. The survey included 212 respondents from Arizona.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* at 2.

²²⁸ *Id.* at 1.

²²⁹ *Id.*

experienced sexual violence while in school.²³⁰ Further, 17% of respondents said the harassment was so severe that they had to leave school.²³¹

- In January 2015, the *Journal of Adolescent Research* published an article that contained excerpts of interviews with Arizona LGBT youth who reported bullying by students and staff in Arizona schools. In one example, an Arizona middle school student who chose to begin dressing in stereotypically male attire said administrators suspected her and a friend of selling drugs in school, “cause like, the way we were dressing... we were the only girls at that middle school that dressed like boys. So it was like ‘now we’re bad.’”²³² Another Arizona student who identified as gender-queer reported telling school administrators that mistreatment by other students caused her to feel uncomfortable in certain classes, and she was asked by administrators, “Why don’t you just choose to wear different things?”²³³ Another Arizona student reported being suspended after getting into a fight with a popular male student who had been calling the LGBT student names; the popular male student was not punished.²³⁴ In other instances, persistent bullying reportedly led to truancy. One lesbian student stated she left school for days as a result of bullying; though she had reported the bullying students to the administration, and the bullies had received a three-day suspension, the bullying continued afterwards.²³⁵ Another student who was subjected to persistent discrimination at school said, “I felt like I just wanted to leave, like I didn’t—I couldn’t even imagine finishing high school. So, I transferred.”²³⁶ Other Arizona youth reported that they concealed their LGBT status in order to avoid discrimination or harassment on campus. For instance, “[o]ne Arizona youth said, ‘Just seeing the type of attention that people put on anybody who didn’t seem like they were the same as anybody else... that made me want to avoid expressing myself in any way, because I didn’t want the same attention they were receiving.’”²³⁷
- In response to a 2014 survey of students at the University of Arizona, many LGBTQ+ and trans students reported that they had experienced verbal harassment and discrimination related to their sexual orientation and gender identity on campus.²³⁸ Over 97% of trans students and 90.7% of LGBTQ+ student reported hearing anti-LGBTQ slurs and comments on campus at least sometimes.²³⁹ Nearly 12% of trans students and 9.9% of LGBTQ+ students said they heard such slurs and comments several times a day.²⁴⁰ Approximately 15% of LGBTQ+ students and that they had been the target of derogatory

²³⁰ THE NATIONAL CENTER FOR TRANSGENDER EQUALITY & ONE COMMUNITY, U.S. TRANSGENDER SURVEY: ARIZONA STATE REPORT 1-2 (2017), available at <http://www.transequality.org/sites/default/files/docs/usts/USTSAZStateReport%281017%29.pdf>.

²³¹ *Id.*

²³² Shannon D. Snapp, et al., *Messy, Butch, and Queer: LGBTQ Youth and the School-to-Prison Pipeline*, 30 J. OF ADOLESCENT RES. 57, 67 (2015).

²³³ *Id.* at 67-68.

²³⁴ *Id.* at 71.

²³⁵ *Id.* at 72.

²³⁶ *Id.*

²³⁷ *Id.* at 69.

²³⁸ PRING ET AL., *supra* note 138.

²³⁹ *Id.* at 16.

²⁴⁰ *Id.*

remarks or comments based on their sexual orientation (data for trans respondents were not available).²⁴¹

Twenty-two percent of LGBTQ+ students reported experiencing discrimination based on their sexual orientation or gender identity on campus, and most (70.2%) did not report the incident to an authority figure, such as the Dean of Students or the University of Arizona Police Department.²⁴² Over 9% of LGBTQ+ students reported that discrimination related to their sexual orientation was the most significant stressor in their lives during the prior school year, and a similar percentage said the same related to their gender identity or expression.²⁴³

Some LGBTQ+ students reported that they avoided going to class because of discrimination and harassment: 3.7% said they avoided going to class because of harassment, discrimination, or discomfort based on their sexual orientation in the six month period prior to the survey, and 11.8% said they had done the same because of harassment, discrimination, or comfort based on their gender identity.²⁴⁴

Additionally, some LGBTQ+ students reported that they didn't feel "very safe" on campus or that they had been intimidated or threatened because of their sexual orientation or gender identity. Approximately 5% of LGBTQ+ students said they felt "not very safe" and 51.2% said they felt only "somewhat safe" on campus. Trans students were more likely to report feeling unsafe on campus: 23.9% said they felt "not very safe" and 47.8% said they felt only "somewhat safe."²⁴⁵ Trans students were almost four times more likely to report feeling unsafe in bathrooms and twice as likely to report feeling unsafe in the recreation center compared to LGBTQ+ students.²⁴⁶ Nearly 12% of LGBTQ+ students said that they felt intimidated or threatened because of their sexual orientation, though no LGBTQ+ students reported that they had been the target of physical violence because of their sexual orientation. These data were not available for trans students.²⁴⁷

In addition, more LGBTQ+ students reported experiencing sexual violence than non-LGBTQ+ students: 41.1% of LGBTQ+ students said that they had experienced touching without consent compared to 4.3% of non-LGBTQ+ students.²⁴⁸ Nearly 5% of LGBTQ+ students said they had been forced to have sex without consent compared to 1.1% of non-LGBTQ+ students, but the disparity was not statistically significant.²⁴⁹

Florida

- Data from the U.S. Centers for Disease Control and Prevention's 2015 Youth Risk Behavior Survey indicate that LGB youth in Florida experience higher rates of being bullied and threatened with violence than non-LGB youth. LGB students in Florida were

²⁴¹ *Id.* at 17.

²⁴² *Id.* at 17-18.

²⁴³ *Id.* at 36.

²⁴⁴ *Id.* at 17.

²⁴⁵ *Id.* at 42.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 16.

²⁴⁸ *Id.* at 19.

²⁴⁹ *Id.* at 19.

more than twice as likely to report being bullied at school (33.0% v. 12.7%)²⁵⁰ and electronically bullied (25.5% v. 9.6%)²⁵¹ in the 12 months prior to the survey than non-LGB students. In addition, LGB students were more likely to report being in a physical fight in the 12 months prior to the survey (28.6% v. 19.7%)²⁵² and were more than twice as likely to report being threatened or injured with a weapon on school property (14.0% v. 6.0%).²⁵³ Not surprisingly, LGB students were more than twice as likely as non-LGB students to report missing school because they felt unsafe at least once in the month prior to the survey (15.8% v. 6.6%).²⁵⁴

- The 2015 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 73% of respondents from Florida said they had experienced verbal harassment based on their sexual orientation at school, and 56% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.²⁵⁵ Many students also reported experiencing physical harassment based on their sexual orientation (28%) or gender identity (22%) at school in the year prior to the survey.²⁵⁶ In addition, 14% of respondents reported that they had experienced physical assault at school because of their sexual orientation and 9% of respondents said they had experienced physical assault because of their gender identity at school in the year prior to the survey.²⁵⁷

Further, 62% of transgender student respondents from Florida reported that they were unable to use the bathroom or locker room at school that aligned with their gender identity, and 63% were prevented from using their preferred name or pronouns in school.²⁵⁸ Only half of the students reported having access to a Gay-Straight Alliance or similar club in school.²⁵⁹

Of students who were bullied or harassed at school, only 43% reported the incident to school staff.²⁶⁰ Less than one third (30%) of those who reported bullying or harassment to staff said that it resulted in effective intervention.²⁶¹

- In response to the 2011 National Transgender Discrimination Survey, 78% of survey respondents from Florida who were perceived to be transgender while in grades K-12 experienced verbal harassment, 41% experienced physical assault, and 10%

²⁵⁰ *Id.* at 103.

²⁵¹ *Id.* at 104.

²⁵² *Id.* at 99.

²⁵³ *Id.* at 98.

²⁵⁴ *Id.* at 102.

²⁵⁵ GLSEN, SCHOOL CLIMATE IN FLORIDA 1 (2017), <https://www.glsen.org/sites/default/files/Florida%20State%20Snapshot%20-%20NSCS.pdf>. The survey included 559 respondents from Florida.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 2.

²⁶⁰ *Id.* at 1.

²⁶¹ *Id.*

experienced sexual violence while in school.²⁶² Further, 14% of respondents said the harassment was so severe that they had to leave school.²⁶³

- A 2017 survey of students at the University of West Florida found that 28.2% of LGBTQ students reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (27.6%), unfair treatment (9.4%), exclusion (5.5%), harassment/bullying (10.5%), and threats of violence (2.2%).

A prior survey of students at the University of West Florida conducted in 2013 found that 38.8% of LGBTQ students reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (32.7%), unfair treatment (7.8%), exclusion (12.1%), harassment/bullying (12.1%), and threats of violence (2.6%). LGBTQ students with these experiences rated the degree of impact of these experiences on their educational or personal activities as “quite a bit/extreme” (11.6%), “moderate” (20.9%), “not at all/slight” (67.5%).²⁶⁴

- A 2010 survey of the campus climate for LGBTQ faculty, staff, and students at the University of North Florida found that LGBT students experience stigma and discrimination on campus. The survey found that nearly half (49%) of LGBTQ students had experienced at least one incident of bias or harassment because of their sexual orientation or gender identity.²⁶⁵ Incidents of bias and harassment included a range of experiences such as hearing anti-LGBT jokes, being threatened or having property vandalized, being sexually or verbally harassed, and having employment problems.²⁶⁶ For example, 44% of LGBTQ students had experienced verbal harassment, 17% felt pressured to hide their sexual orientation or gender identity, and 2% had been pressured to leave campus housing because of their sexual orientation or gender identity.²⁶⁷ A similar percentage of LGBTQ students (54%) reported that they observed incidents of bias and harassment experienced by LGBTQ people.²⁶⁸

Several students described specific incidents of harassment and discrimination. A number of students reported being called derogatory names including “bull dyke,” “carpet muncher,” “fag/faggot,” “homo,” “man-hating dyke,” and “queer.” Students also reported that faculty did not intervene when they overheard anti-gay jokes. According to one

²⁶² The survey used a non-probability sampling method. THE NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY: FLORIDA RESULTS, *available at* http://www.endtransdiscrimination.org/PDFs/ntds_state_fl.pdf (last visited July 5, 2017).

²⁶³ *Id.*

²⁶⁴ Unpublished data from campus diversity climate survey gathered by Susan E. Walch and colleagues in 2017 (on file with authors).

²⁶⁵ UNIVERSITY OF NORTH FLORIDA COMMISSION ON DIVERSITY, COMMITTEE ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUITY. UNIVERSITY OF NORTH FLORIDA, CAMPUS CLIMATE SURVEY FOR SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION 24 (June 2011), <http://www.unf.edu/uploadedFiles/sa/lgbt/CampusClimateJune2011.pdf>.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 26.

²⁶⁸ *Id.* at 31.

report, a “student said those homos need to get off their ass and get a job. This was during an accounting course. The instructor made no comment.”²⁶⁹

In addition, 12% of LGBTQ student respondents said they felt that the harassment was serious enough to cause LGBTQ people to fear for their safety on campus.²⁷⁰

- In 2016, federal authorities were reportedly investigating 35 cases of discrimination against transgender students in the U.S. One of the cases involved a transgender student in Volusia County who was failing gym class because he was late or improperly dressed as a result of not being able to use the boys’ locker room when other students were present. Another case involved a Florida student who was required to change clothes for gym class in the media center, which was a long walk away from the gym.²⁷¹
- In 2015, two transgender students reported to their Florida public high school that a teacher told students that he was against gays and lesbians and attempted to give one of them a book titled *Gay No More*.²⁷² In response to the complaint, the school board voted to suspend the teacher pending administrative review.²⁷³ An administrative law judge ruled that the teacher should be disciplined but not fired, and the recommendation was adopted by the school board.²⁷⁴
- From 2008 to 2011, a gay high school student at a Flagler County public school said that he was physically and verbally harassed because of his sexual orientation. According to the student, other students would call him a “fag” and “cocksucker” on the bus and harass him for being gay during class. One student allegedly attacked the student after following him home and then continued to torment him at school, including once telling him, “I will kill your ass and make sure I will drag your ass out of school in a body bag.” According to the student, school officials took no action to protect him and even contributed to the harassment. When the student avoided school out of fear, school officials allegedly threatened to report him for truancy.²⁷⁵
- In 2011, the Lake County School Board refused to allow the formation of a Gay-Straight Alliance club at Carver Middle School. When this decision was challenged in court, the School Board spent years in the court system defending its position. The Eleventh Circuit

²⁶⁹ *Id.* at 27.

²⁷⁰ *Id.* at 38.

²⁷¹ Letitia Stein, *U.S. School an Antidote to Transgender Discrimination Complaints*, REUTERS (Dec. 19, 2016), <http://www.reuters.com/article/us-lgbt-education-idUSKBN14817D>.

²⁷² *Two Transgender Students Claim Teacher Harassment*, WPTV WEST PALM BEACH (Sept. 16, 2016, 2:41 p.m.), <http://www.wptv.com/news/state/two-transgender-students-claim-teacher-harassment>.

²⁷³ *Id.*

²⁷⁴ Pamela McCabe, *Board Approves Bonitas High Principal, Brings Back JROTC Teacher*, USA TODAY (Feb. 6, 2017), <https://www.usatoday.com/story/news/education/chalkboard/2017/02/06/board-approves-bonitas-principal-brings-back-jrotc-teacher/97573484/>.

²⁷⁵ Scott Rose, *The Office of Civil Rights lets Gay-bashing Flagler, Florida School Administrators Off the Hook*, SHADOW PROOF (Apr. 22, 2012), <https://shadowproof.com/2012/04/22/the-office-of-civil-rights-lets-gay-bashing-flagler-florida-school-administrators-off-the-hook/>.

Court of Appeals ruled that the Equal Access Act required the school to permit students to form the club.²⁷⁶

Georgia

- Data from the U.S. Centers for Disease Control and Prevention's 2015 Youth Risk Behavior Survey indicate that LGB youth in DeKalb County experience higher rates of being bullied and threatened with violence than non-LGB youth. DeKalb County is the only locality in Georgia that collects information about students' sexual orientation in its YRBS survey.

In DeKalb County, LGB students were more likely to report being bullied at school (20.8% v. 12.8%)²⁷⁷ and electronically bullied (12.0% v. 8.0%)²⁷⁸ in the 12 months prior to the survey than non-LGB students. In addition, LGB students were more likely to report being in a fight in the 12 months prior to the survey (34.6% v. 24.4%)²⁷⁹ and were more than twice as likely to report being threatened or injured with a weapon on school property (14.2% v. 6.6%)²⁸⁰. Not surprisingly, LGB students were more likely than non-LGB students to report missing school because they felt unsafe at least once in the month prior to the survey (13.9% v. 8.7%).²⁸¹

- Other surveys have also documented bullying and harassment of LGBT youth in Georgia. For instance, the 2013 GLSEN National School Climate survey reported that: 80% of Georgia middle- and high-school students responding to the survey said they had experienced verbal harassment based on their sexual orientation in the year prior to the survey, and 56% said they had experienced verbal harassment based on their gender expression.²⁸² Many students also reported experiencing sexual harassment (58%), cyber bullying (49%), and physical harassment (32%). Most of the students who experienced harassment did not report it to staff (65%) or their families (56%).²⁸³ Of those who reported incidents to school authorities, only 26% said that the report resulted in effective intervention.²⁸⁴
- Additionally, in response to the 2011 National Transgender Discrimination Survey, 83% of Georgia participants who identified as transgender while in grades K-12 reported experiencing harassment at school, and 39% reported experiencing physical assault at school because of their gender identity.²⁸⁵ Similarly, 46% of 2,124 LGBT adults in

²⁷⁶ *Carver Middle School Gay-Straight Alliance v. School Board of Lake County, Florida*, 842 F.3d 1324 (11th Cir. 2016). See also, Press Release, American Civil Liberties Union of Florida, Federal Appeals Court Upholds Students' Rights in Gay-Straight Alliance Case (Dec. 6, 2016), <https://aclufl.org/2016/12/06/federal-appeals-court-upholds-students-rights-in-gay-straight-alliance-case/>.

²⁷⁷ Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 103 (2016).

²⁷⁸ *Id.* at 104.

²⁷⁹ *Id.* at 99.

²⁸⁰ *Id.* at 98.

²⁸¹ *Id.* at 102.

²⁸² GLSEN, SCHOOL CLIMATE IN GEORGIA 1 (2014),

<https://www.glsen.org/sites/default/files/GLSEN%202013%20Georgia%20State%20Snapshot.pdf>.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY AND LESBIAN TASK FORCE, FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, GEORGIA RESULTS, http://www.transequality.org/sites/default/files/docs/resources/ntds_state_ga.pdf (last visited Dec. 19, 2016).

Georgia who completed a 2011 survey said that they had been harassed or bullied when they were in middle or high school.²⁸⁶

- A survey of students, faculty, and staff at the University of Georgia, which included 1,058 LGBQ²⁸⁷ respondents and 66 respondents who identified as transgender or genderqueer, found higher levels of discrimination and discomfort among LGBTQ individuals compared to their non-LGBTQ peers.²⁸⁸ Nearly half (65%) of the transgender and genderqueer respondents reported experiencing exclusionary (e.g., shunned, ignored), intimidating, offensive, or hostile conduct, and 47% of transgender and genderqueer respondents who reported such conduct said it was because of their gender identity.²⁸⁹ By comparison, 16% of all cisgender female respondents and 13% of cisgender male respondents reported experiencing exclusionary, intimidating, offensive, or hostile conduct.²⁹⁰ Among LGBQ respondents, 48% said they had experienced exclusionary, intimidating, offensive, or hostile conduct, compared to 26% of heterosexual respondents.²⁹¹

Additionally, 12% of transgender and genderqueer respondents said they were uncomfortable or very uncomfortable with the campus climate compared to 6% of cisgender females and 4% of cisgender males.²⁹² Similarly, 11% of LGBQ respondents said they were uncomfortable or very uncomfortable with the campus climate, compared to 6% of heterosexual respondents.²⁹³ Several LGBTQ students also shared examples of the types of harassment they faced on or around campus, including being called derogatory names and having their picture taken without consent.²⁹⁴

- A survey of students at Georgia Tech also found that LGB students were less likely to find the campus environment welcoming and inclusive than non-LGB students.²⁹⁵ Forty-one percent of LGB undergraduates and 26% of LGB graduate students said they had experienced instances of marginalization on campus (e.g., a sense of exclusion or feeling left out), compared to 22% of non-LGB undergraduates and 16% of non-LGB graduate students.²⁹⁶ In addition, 57% of all undergraduates and 20% of all graduate students said that they had heard disparaging remarks about LGB people on campus.²⁹⁷

Idaho

- In response to a 2003 survey of LGBT people in Idaho, 43% of the gay and bisexual male respondents and 22% of the lesbian and bisexual female respondents said they

²⁸⁶ PHILLIP RUSH CENTER, GEORGIA STATEWIDE LGBT COMMUNITY SURVEY 1 (2013), <http://www.rushcenteratl.org/wp-content/uploads/2013/07/Rush-Center-Survey-Results-with-Cover.pdf>.

²⁸⁷ LGBQ respondents included those who identified as lesbian, gay, bisexual, pansexual, queer, or questioning. RANKIN & ASSOCIATES, UNIVERSITY OF GEORGIA CAMPUS CLIMATE RESEARCH STUDY III (2016), <http://diversity.uga.edu/uploads/documents/UGA-campus-climate-2016-full-report.pdf>.

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 79.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 97.

²⁹² *Id.* at 52.

²⁹³ *Id.* at 58.

²⁹⁴ *Id.* at 92.

²⁹⁵ JONATHAN GORDON, GEORGIA TECH, GT CLIMATE ASSESSMENT SURVEY REPORT 3.11-3.12 (2013), <http://facultygovernance.gatech.edu/GFGFAAS2014-102213-M-Attach1.pdf>.

²⁹⁶ *Id.* at 3.13.

²⁹⁷ *Id.* at 3.16-3.17.

had experienced verbal harassment or name calling when they were in K-12 education, and 32% of the gay and bisexual male respondents and 22% of the lesbian and bisexual female respondents said they had experienced threats of physical violence while in K-12. Of the transgender respondents, 44% described their K-12 experience as negative, and half of all LGBT respondents said that their schools did not try to make LGBT students feels safe.²⁹⁸

- A 2005 campus climate survey of students at Boise State University found that over one-quarter (25.9%) of the LGB respondents and 60% of transgender respondents reported being harassed because of their sexual orientation or gender identity.²⁹⁹ Additionally, only 40% of transgender respondents and 11.9% of the LGB respondents disagreed with the statement “I have received fair and equal treatment at Boise State.”³⁰⁰ LGBT students were more likely to report that they experienced unfair or unequal treatment than students in other demographic categories.³⁰¹

Michigan

- Data from the U.S. Centers for Disease Control and Prevention's 2017 Youth Risk Behavior Survey indicate that LGB youth in Michigan experience higher rates of being bullied and threatened with violence than non-LGB youth. LGB students in Michigan were more likely to report being bullied at school (38.2% v. 21.1%)³⁰² and electronically bullied (30.9% v. 17.9%)³⁰³ in the year prior to the survey than heterosexual students. In addition, LGB students were more likely to report being in a physical fight in the year prior to the survey (34.5% v. 22.4%)³⁰⁴ and were twice as likely to report being threatened or injured with a weapon on school property (11.9% v. 5.7%).³⁰⁵ Not surprisingly, LGB students were more than twice as likely as heterosexual students to report missing school because they felt unsafe at least once in the month prior to the survey (16.5% v. 6.9%).³⁰⁶
- The 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 72% of respondents from Michigan said they had experienced verbal harassment based on their sexual orientation at school, and 58% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.³⁰⁷ Many students also reported experiencing physical harassment based on their sexual orientation (28%) or gender expression (22%) at school in the year prior to the survey.³⁰⁸ In addition, 12% of respondents reported that they had experienced physical assault at school because of their sexual orientation, and 10% of

²⁹⁸ NICOLE LEFAVOUR & JOSEPH POLLARD, IDAHO LESBIAN, GAY, BISEXUAL, AND TRANSGENDER SURVEY (2003), available at <http://www.safeschoolscoalition.org/Nicole-SURVEYREPORT-%20final.pdf>.

²⁹⁹ BOISE STATE UNIV., CAMPUS CLIMATE SURVEY STUDENT RESULTS SUMMARY 5, 2006, available at <http://academics.boisestate.edu/provost/files/2009/01/report-students.pdf>.

³⁰⁰ *Id.* at 7.

³⁰¹ *Id.* at 5, 7.

³⁰² Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, 67 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 168 (2018), available at <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>.

³⁰³ *Id.* at 165.

³⁰⁴ *Id.* at 159.

³⁰⁵ *Id.* at 156.

³⁰⁶ *Id.* at 102.

³⁰⁷ GLSEN, SCHOOL CLIMATE IN MICHIGAN 1 (2017), https://www.glsen.org/sites/default/files/Michigan%20State%20Snapshot%20-%202017%20NSCS_0.pdf. The survey included 739 respondents from Michigan.

³⁰⁸ *Id.*

respondents said they had experienced physical assault at school because of their gender expression in the year prior to the survey.³⁰⁹ Further, 60% of transgender student respondents from Michigan reported that they were unable to use the bathroom or locker room at school that aligned with their gender identity, and 52% were prevented from using their preferred name or pronouns in school.³¹⁰ Around half (55%) of student respondents from Michigan reported having access to a Gay-Straight Alliance or similar club in school.³¹¹

Of students who were bullied or harassed at school, only 44% of students reported the incident to school staff.³¹² Only one fourth (25%) of those who reported bullying or harassment to staff said that it resulted in effective intervention.³¹³

- In response to the 2015 U.S. Transgender Survey, 55% of survey respondents from Michigan who were perceived to be transgender while in grades K-12 reported experiencing verbal harassment, 26% reported experiencing physical assault, and 10% reported experiencing sexual violence while in school.³¹⁴ Further, 20% of respondents said the harassment was so severe that they had to leave school.³¹⁵
- A 2016 survey of students at the University of Michigan found that 31% of LGBTQ+ students reported one or more experiences of derogatory treatment on the basis of sexual orientation or gender identity in the prior year.³¹⁶ Moreover, LGBTQ+ students were less likely than non-LGBTQ+ students to report feeling that they “are valued and belong” at the university and less likely than non-LGBTQ+ students to report feeling that they “are thriving and growing” at the university.³¹⁷ LGBTQ students also reported less agreement with the idea that they receive fair treatment than non-LGBTQ students.³¹⁸
- In 2017, a gay student at a public high school in Michigan reported that he was verbally harassed after coming out. Other students called him “disgusting” and called him a “thing.”³¹⁹ He also had sharp pencils thrown at his neck. In one incident, students filmed him with their phones and said “look at the gay kid.” The student chose to eat outside for the rest of the year in order to avoid harassment.³²⁰
- In 2017, a photo was posted on Instagram threatening to bring an assault rifle to a Petoskey High School’s Gay Straight Alliance meeting. The post was in the form of a

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.* at 2.

³¹² *Id.* at 1.

³¹³ *Id.*

³¹⁴ The survey used a non-probability sampling method. THE NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY: MICHIGAN RESULTS, *available at* <http://www.transequality.org/sites/default/files/docs/usts/USTSMIStateReport%281017%29.pdf> (last visited July 11, 2018).

³¹⁵ *Id.*

³¹⁶ RESULTS OF THE 2016 UNIVERSITY OF MICHIGAN STUDENT CAMPUS CLIMATE SURVEY ON DIVERSITY, EQUITY AND INCLUSION 5 (2016), *available at* <https://diversity.umich.edu/wp-content/uploads/2017/11/DEI-STUDENT-REPORT-FINAL.pdf>.

³¹⁷ *Id.* at 26, 27.

³¹⁸ *Id.* at 28.

³¹⁹ Chris Azzopardi, *Being Gay in High School Today*, METRO PARENT (Oct. 11, 2017), <https://www.metroparent.com/daily/education/school-issues/gay-high-school-today/>.

³²⁰ *Id.*

meme that said, “When you walk into the GSA (Gay Straight Alliance) meeting with a fully loaded AR-15...this is where the fun begins.”³²¹ Another post on the account showed a sign reading, “Homosexuals are possessed by demons.”³²² Police discovered that the account was operated by a group of students at Petoskey High School.³²³

- In 2016, a large rock outside of Hastings High School in Hastings, Michigan, was painted with anti-gay remarks. According to reports, the rock was covered in different colors of paint, with “rainbows are gay,” “hunt bucks not men,” and “class of 16 we’re not gay” written on it.³²⁴ One student at the high school who was not openly LGB told local media outlets that “[Being gay is] not something that is highly accepted at that school... [t]here are others like me but they’re not out and open about it either. If they are, they kind of get messed with.”³²⁵
- In 2016, the Michigan Department of Education received comments on its proposal concerning how schools should treat LGBT kids. More than a dozen LGBT students came to one board meeting to testify in support of the proposal, citing their own stories as evidence of bullying and discrimination in Michigan schools. One student, who identified as “openly bisexual and gender non-conforming” explained that he suffered “constant bullying” in middle school, and was forced to transfer schools twice before he found a school where he felt accepted.³²⁶ He first transferred to a charter school where an assistant principal said that she found it “interesting and fascinating that [he] was transgender, because she was a scientist.”³²⁷ The student’s father also described his child’s experiences with his gender identity and sexuality at school: “The school district we lived in had no guidelines for transgender youth. And bullying by students, and the administration, caused [my child] to live in fear. He withdrew from this abusive situation.”³²⁸
- In 2016, the Office for Civil Rights at the U.S. Department of Education was investigating the Bedford School District for not allowing transgender students to access restrooms consistent with their gender identity. The school reportedly had forced transgender students to use single stall, gender-neutral bathrooms, even if they had requested to use restrooms matching their gender identity.³²⁹
- The grandparents and guardians of a transgender six-year old reported in testimony to the Michigan Department of Civil Rights that their granddaughter’s public school refused to accept her transition, and instead continued to treat her like a boy.³³⁰ They transferred

³²¹ Meghan Morelli, *Police investigating alleged threat against Petoskey High School students*, UPNORTHLIVE.COM (Mar. 8, 2017), <http://upnorthlive.com/news/local/police-investigating-alleged-threat-against-petoskey-high-school-students>.

³²² *Id.*

³²³ *Id.*

³²⁴ Michael Dupre, *Hastings High School rock painted with anti-gay phrases*, FOX 17 NEWS (May 20, 2016), <https://fox17online.com/2016/05/20/hastings-high-school-rock-painted-with-anti-gay-phrases/>.

³²⁵ *Id.*

³²⁶ Kate Wells, *Transgender students speak out for state LGBT proposals*, MICHIGAN RADIO (Apr. 13, 2016), <http://michiganradio.org/post/transgender-students-speak-out-state-lgbt-proposals>.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ Kate Wells, *Feds Investigate Michigan School District for Transgender Discrimination*, MICHIGAN RADIO (Apr. 7, 2016), <https://www.michiganradio.org/post/feds-investigate-michigan-school-district-transgender-discrimination>.

³³⁰ MICHIGAN DEPARTMENT OF CIVIL RIGHTS, REPORT ON LGBT INCLUSION UNDER MICHIGAN LAW WITH RECOMMENDATIONS FOR ACTION 59 (2013), http://www.michigan.gov/documents/mdcr/MDCR_Report_on_LGBT_Inclusion_409727_7.pdf.

the girl to a school in a different city, which resulted in significant hardship for the family: “[T]he mileage and wear and tear on the vehicles plus all of the gasoline that we were using at four dollars a gallon was more than we could bear. After one year... we decided that we would, as a family, have to sell our beautiful home in our great neighborhood and move closer to Ann Arbor.”³³¹

- In 2017, a student at the University of Michigan came out via social media on National Coming Out Day in October. The student received support from friends, but his roommates reportedly “started using gay slurs and saying ‘All gays go to hell.’”³³² Fearing for his safety, he began staying at friends’ apartments rather than his dorm. The student later discovered that many of his belongings had been thrown out the window, resulting in around \$680 in losses.³³³ The student’s request for a personal protection order against one of his roommates was granted by a judge.³³⁴

Missouri

- In 2009, a University of Missouri Campus Climate survey found that 34.8% of LGBTQ respondents and 57.1% of transgender respondents had reported experiences of harassment on campus.³³⁵ These rates are more than double and triple the rate at which the overall survey sample reported harassment (15.7%).³³⁶

Montana

- A survey of Montana State University students conducted by the university’s Diversity Awareness Office found that 26% of LGBTQ students said they had been harassed in classrooms, and 53% of LGBTQ students felt that they had to conceal their sexual orientation or gender identity to avoid harassment or discrimination.³³⁷
- In 2015, a transgender community college student reported to the media that classmates called her “a tranny...a fag...every dirty word that a transgender person could be called,” and a classmate called her wife, who attended the same school, a “fag lover.” The transgender student said that she reported the bullying to school officials but no action was taken. She later withdrew from the college.³³⁸
- In 2014, a young LGBT person from Montana reported to the media that when she came out as a freshman in high school she “experienced a lot of bullying from the other boys in the school.” She said that school officials did not address the problem after her father reported the bullying, so she transferred to another school.³³⁹

³³¹ *Id.* at 59-60.

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ MizzouDiversity, Campus Climate Research: 2009 Campus Climate Survey, <http://diversity.missouri.edu/about/climate/> (last visited Oct. 9, 2013).

³³⁶ *Id.*

³³⁷ Gail Schontzler, *Queer Students Say MSU Campus Intolerant*, BOZEMAN DAILY CHRONICLE, Jan. 27, 2016.

³³⁸ Keila Szpaller, *Transgender Student Drops Out, Alleges Discrimination at Missoula College*, BILLINGS GAZETTE, Aug. 9, 2015, http://billingsgazette.com/news/state-and-regional/montana/transgender-student-drops-out-alleges-discrimination-at-missoula-college/article_a57b17cd-4b32-5be1-8a61-3201439a137d.html.

³³⁹ Briana Wipf, *Barriers Abound*, GREAT FALLS TRIBUNE, Dec. 14, 2014.

North Carolina

- Data from the 2013 North Carolina Youth Risk Behavior Survey indicate that LGB youth in the state experience higher rates of being bullied and threatened with violence than non-LGB youth. More than one-third of LGBQ high school students (38.8%) in North Carolina reported that they had been teased because someone thought they were LGB in the 12 months prior to the survey. LGBQ students were twice as likely as non-LGBQ students to report being bullied in the 12 months prior to the survey (34.6% v. 17.3%). LGBQ students in North Carolina were also over twice as likely as non-LGBQ students to report being electronically bullied (26.4% v. 10.5%). In addition, LGBQ students were more likely than non-LGBQ students to report having been in a fight in the 12 months prior to the survey (34.8% v. 23.8%) and to having been threatened with a weapon such as a gun, a knife, or a club while on school property (9.9% v 6.5%).³⁴⁰

Despite the increased risk of teasing, bullying, and violence while at school, LGBQ students felt less supported by their teachers. While 60.2% of non-LGBQ students in North Carolina either agreed or strongly agreed that their teachers really cared about them and gave them a lot of encouragement, only 48.4% of LGBQ students felt that level of support from their teachers. These negative experiences also likely contributed to the fact that LGBQ students were almost three times as likely as non-LGBTQ students to report missing school because they felt unsafe. Of the LGBQ students, 15.6% reported that they did not go to school one or more days in the month prior to the survey because they felt unsafe at school or on their way to school, compared to 5.7% of non-LGBQ students.³⁴¹

- A 2012 campus climate survey of faculty, staff, and students at the University of North Carolina found evidence of harassment based on sexual orientation and gender identity on campus.³⁴² Of the respondents who identified as LGBQ, 28% reported experiencing verbal harassment and 26% reported fearing for their physical safety because of their sexual orientation.³⁴³ Among transgender respondents, 32% reported experiencing verbal harassment and 36% reported fearing for their physical safety because of their gender identity or expression.³⁴⁴ In addition, respondents were concerned that being involved with LGBT issues or campus groups would negatively impact their careers.³⁴⁵
- A 2013 campus climate survey of LGBT students, recent alumni, faculty, and staff at North Carolina State University also found evidence of animus toward LGBT people on campus.³⁴⁶ Three-quarters of student/alumni respondents reported hearing derogatory

³⁴⁰ CHRISTY MALLORY & BRAD SEARS, THE WILLIAMS INST., DISCRIMINATION, DIVERSITY, AND DEVELOPMENT: THE LEGAL AND ECONOMIC IMPLICATIONS OF NORTH CAROLINA'S HB2 (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development-The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf>.

³⁴¹ *Id.*

³⁴² TERRI L. PHOENIX, CAMPUS CLIMATE: REGARDING SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION 3 (2011), <http://provost.unc.edu/files/2012/09/campusclimaterreport.pdf>. Twenty-eight percent of those who had experienced or witnessed harassment said that the harassers were university employees.

³⁴³ *Id.* at 8.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ JUSTINE HOLLINGSHEAD, REBECCA JAEGER-MEYER & LESLIE WARE, NC STATE UNIVERSITY 2012 TO 2013 GAY, LESBIAN, BISEXUAL AND TRANSGENDER (GLBT) CLIMATE SURVEY REPORT 6 (2013), <https://oied.ncsu.edu/faculty/wp-content/uploads/2013/03/Climate-Survey-Full-Report-Fall-2013-Accessible.pdf>.

remarks about LGBT people on campus, along with 46% of faculty/staff respondents.³⁴⁷ Thirteen percent of students/alumni and 9% of faculty/staff reported hearing derogatory LGBT-related remarks directed at them.³⁴⁸ Students also reported feeling uncomfortable in public spaces on campus (29%) and in residence halls (27%) because of their sexual orientation or gender identity.³⁴⁹

Pennsylvania

- A 2012 campus climate survey of Bloomsburg University found that nearly 30% of respondents had reported seeing conduct towards someone on campus that “created an exclusionary, intimidating, offensive, and/or hostile working or learning environment.”³⁵⁰ Of those respondents, the most common basis for the behavior was sexual orientation, which was reported in 23% of the occurrences observed.³⁵¹
- A 2011 campus climate survey of LGBT students at Penn State found that 57.4% of a randomly sampled group of students and 77.3% of a purposefully sampled group of LGBT students reported hearing insensitive or disparaging remarks because of someone’s sexual orientation.³⁵² Additionally, 49% of the purposely sampled group of LGBT students reported hiding their sexual orientation or gender identity at least some of the time to avoid harassment.³⁵³

Texas

- Data from the U.S. Centers for Disease Control and Prevention’s 2015 Youth Risk Behavior Survey indicate that LGB youth in Florida experience higher rates of being bullied and threatened with violence than non-LGB youth. Data from the U.S. Centers for Disease Control and Prevention’s 2015 Youth Risk Behavior Survey indicate that LGB youth in Houston and Fort Worth experience higher rates of being bullied and threatened with violence than non-LGB youth. Houston and Fort Worth are the only school districts in Texas that collect information about students’ sexual orientation in their YRBS surveys.

As compared to non-LGB students, LGB students in Houston and Fort Worth were more likely to report being bullied at school (Houston: 22.1% v. 11.0%; Fort Worth: 28.5% v. 11.5%)³⁵⁴ and electronically bullied (Houston: 22.1% v. 8.8%; Fort Worth: 23.3% v. 7.5%)³⁵⁵ in the 12 months prior to the survey. In addition, LGB students in both cities were more likely to report being in a fight in the 12 months prior to the survey (Houston: 33.8% v. 22.8%; Fort Worth: 36.7% v. 23.3%)³⁵⁶ and were more likely to report being threatened or injured with a weapon on school property (Houston: 17.2% v. 6.2%; Fort

³⁴⁷ *Id.* at 7.

³⁴⁸ *Id.* at 21.

³⁴⁹ *Id.* at 16-17.

³⁵⁰ Heather Feldhaus et al., Bloomsburg Univ. of Pa., The Campus Climate at Bloomsburg University: A Snapshot From 2012, 40 (Fall 2013), available at <http://www.bloomu.edu/documents/president/CampusClimateReport.pdf>.

³⁵¹ *Id.* at 41.

³⁵² PENN STATE PULSE DIVISION OF STUDENT AFFAIRS, SEXUAL ORIENTATION AND GENDER IDENTITY, 5 (Fall 2011), available at <http://studentaffairs.psu.edu/assessment/pdf/167.pdf>.

³⁵³ *Id.*

³⁵⁴ Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 103 (2016).

³⁵⁵ *Id.* at 104.

³⁵⁶ *Id.* at 99.

Worth: 11.9% v. 5.0%).³⁵⁷ LGB students in both cities were also more likely than non-LGB students to report missing school because they felt unsafe at least once in the month prior to the survey (Houston: 17.7% v. 8.3%; Fort Worth: 16.4% v. 6.0%).³⁵⁸

- The 2015 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 78% of respondents from Texas said they had experienced verbal harassment based on their sexual orientation at school, and 58% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.³⁵⁹ Many students also reported experiencing physical harassment based on their sexual orientation (35%) or gender identity (26%) at school in the year prior to the survey.³⁶⁰ In addition, 18% of respondents reported that they had experienced physical assault at school because of their sexual orientation and 12% of respondents said they had experienced physical assault because of their gender identity at school in the year prior to the survey.³⁶¹

Further, 65% of transgender student respondents from Texas reported that they were unable to use the bathroom or locker room at school that aligned with their gender identity, and 64% were prevented from using their preferred name or pronouns in school.³⁶² Only 1 in 3 students reported having access to a Gay-Straight Alliance or similar club in school.³⁶³

Of students who were bullied or harassed at school, only 60% of students reported the incident to school staff.³⁶⁴ Less than one third (30%) of those who reported bullying or harassment to staff said that it resulted in effective intervention.³⁶⁵

- In response to the 2015 U.S. Transgender Discrimination Survey, 73% of survey respondents from Texas who were perceived to be transgender while in grades K-12 experienced verbal, physical, or sexual harassment at school, and 14% said the harassment was so severe that they had to leave school.³⁶⁶
- In 2012, Texas A&M University conducted a campus climate survey of graduate students.³⁶⁷ The survey found that 14% of all students reported observing inappropriate behaviors (such as hostile comments and discriminatory treatment) based on sexual orientation, and 10% of all students reported observing inappropriate behaviors based on gender identity or expression.³⁶⁸ Of those who reported observing such behavior, 31%

³⁵⁷ *Id.* at 98.

³⁵⁸ *Id.* at 102.

³⁵⁹ GLSEN, SCHOOL CLIMATE IN TEXAS 1 (2017), <https://www.glsen.org/sites/default/files/Texas%20State%20Snapshot%20-%20NSCS.pdf>. The survey included 714 respondents from Texas.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.* at 2.

³⁶⁴ *Id.* at 1.

³⁶⁵ *Id.*

³⁶⁶ SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY: TEXAS STATE REPORT 1 (2017), available at <https://www.equalitytexas.org/wp-content/uploads/2017/01/TX-State-Report-FINAL-1.26.17.pdf>.

³⁶⁷ GRAD. & PROF. STUDIES, TEX. A&M UNIV., EXECUTIVE SUMMARY: GRADUATE CAMPUS CLIMATE SURVEY SPRING 2012 3 <http://ogaps.tamu.edu/OGAPS/media/media-library/documents/Campus%20Climate%20Survey/Executive-Summary9-41.pdf> (last visited Feb. 15, 2017).

³⁶⁸ *Id.* at 3, 15.

- said they observed inappropriate behavior based on sexual orientation daily or weekly, and 24% said they observed inappropriate behavior based on gender identity or expression daily or weekly.³⁶⁹ In addition, 4% of all students reported experiencing inappropriate behavior based on sexual orientation and 3% of all students reported experiencing inappropriate behavior based on gender identity.³⁷⁰ Of those who reported experiencing such behavior, 29% said they experienced inappropriate behavior based on sexual orientation daily or weekly, and 10% said they experienced inappropriate behavior based on gender identity or expression daily or weekly.³⁷¹
- Since 2012, the University of Texas at Austin has tracked bias complaints filed with the Campus Climate Response Team (CCRT).³⁷² Over the period from 2012-2015, CCRT received 868 bias complaints.³⁷³ Of the total number, 63 complaints reported incidents of sexual orientation bias, 51 complaints reported incidents of gender expression bias, and 47 complaints reported incidents of gender identity bias.³⁷⁴ Complainants can report multiple forms of bias in one complaint, so there may be overlap among reports of sexual orientation, gender expression, and gender identity bias.
 - In 2015, a public middle school in Texas reportedly banned students from wearing LGBT-supportive t-shirts to school. More than a dozen students wore t-shirts that said “Gay O.K.” to school in order to raise awareness of LGBT bullying and harassment. According to the students, a classmate was persistently harassed after coming out as bisexual, and the administration failed to intervene. The students who wore the shirts were forced to change or go home.³⁷⁵

³⁶⁹ *Id.* at 15.

³⁷⁰ *Id.* at 3, 16.

³⁷¹ *Id.* at 16.

³⁷² Univ. of Tex. Austin, Campus Climate Response Team, <http://diversity.utexas.edu/ccrt/> (last visited Feb. 15, 2017).

³⁷³ UNIV. OF TEX. AUSTIN, 2014-2015 CAMPUS CLIMATE TREND REPORT 1, available at <https://utexas.app.box.com/s/y428bn4y2jibxda5l27ngcrpx8l72upd> (last visited Feb. 15, 2017); UNIV. OF TEX. AUSTIN, 2013-2014 CAMPUS CLIMATE TREND REPORT 1, available at <https://utexas.app.box.com/s/88ccrqlayd41b1nzqjos7z3izkrepol3>, (last visited Feb. 15, 2017); UNIV. OF TEX. AUSTIN, 2012-2013 CAMPUS CLIMATE TREND REPORT 1, available at <https://utexas.app.box.com/s/tos93jxvybi0dfw6v87wrnj1t6yh3t0> (last visited Feb. 15, 2017).

³⁷⁴ UNIV. OF TEX. AUSTIN, 2014-2015 CAMPUS CLIMATE TREND REPORT, *supra* note 373 at 14; UNIV. OF TEX. AUSTIN, 2013-2014 CAMPUS CLIMATE TREND REPORT, *supra* note 373 at 14, 21 26; UNIV. OF TEX. AUSTIN, 2012-2013 CAMPUS CLIMATE TREND REPORT, *supra* note 373 at 10.

³⁷⁵ Dominic Holden, *Students Should Not Have Been Punished For “Gay O.K.” Shirts, District Said*, BUZZFEED, June 8, 2015, https://www.buzzfeed.com/dominicholden/students-improperly-punished-for-wearing-gay-ok-shirts-distr?utm_term=.tdOpgOPNZ#.apXBQEqJ5.